18-57

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~546~~ 246 91

ADOLPH C. WEBER, APPELLANT,

vs.

THE BOARD OF STATE HARBOR COMMISSIONERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 16, 1871.

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1 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit court of the United States, district of California. In equity.

The President of the United States of America, greeting: To James T. Laidley, Stephen S. Tilton, and C. L. Taylor, composing the board of State harbor commissioners:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in San Francisco, on the second day of November, A. D. 1867, to answer a bill of complaint exhibited against you in said court by Adolph C. Weber, who is a citizen and native of Bavaria, Germany, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 7th day of November, in the year of our Lord 1867, and of our Independence the 92nd.

GEO. E. WHITNEY, *Clerk.*
By S. NEALL, *Dep. Clerk.*

Memorandum pursuant to rule 12, *Supreme Court U. S.*

2 You are hereby required to enter your appearance in the above suit on or before the 1st day of December, 1867, next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

GEO. E. WHITNEY, *Clerk.*
By S. NEALL, *Dep. Clerk.*

U. S. MARSHAL'S OFFICE, DISTRICT OF CALIFORNIA.

I hereby certify that I received the within subpœna on November 7th, 1867, and personally served the same on the 8th day of November, A. D. 1867, by delivering to said defendants, James T. Laidley and Stephen S. Tilton, personally, in the county of San Francisco, a copy of said subpœna attached to a certified copy of the complaint.

CHARLES W. RAND,
U. S. Marshall.
Per W'M H. POTTS, *Dep'y.*

SAN FRANCISCO, *November* 12*th*, 1867.

C. L. Taylor not in the State.
Filed January 31st, 1868.

GEO. E. WHITNEY, *Clerk.*
By A. D. SMITH, *D. C.*

3 *Complaint.*

In the circuit court of the United States for the district of California.

ADOLPH C. WEBER, COMPLAINANT,
vs.
JAMES T. LAIDLEY, STEPHEN S. TILTON, AND C. L. Taylor, composing the board of State harbor commissioners, defendants. } In equity.

To the honorable the judge of the circuit court of the United States for the district of California:

Your orator, Adolph C. Weber, of the city and county of San Francisco, State of California, complaining, respectfully sheweth:

Ist. That your orator is not a citizen of the United States, but, on the contrary, is a citizen of, and native of, Bavaria, Germany, and never has been naturalized as a citizen of the United States.

IId. That the defendant, C. L. Taylor, Stephen S. Tilton, and James T. Laidley, are each and all citizens of the State of California, and citizens of the United States, and residents within said State of California.

IIId. That the property and rights of property hereinafter described, are situate in the city and county of San Francisco, in said State.

IV. That, for 14 years last past, your orator and his predecessors in interest and estate, hath and have been the owners, and in the
4 quiet, exclusive, open, and notorious possession of all and singular that tract and parcel of land lying and being in the city and county of San Francisco, California, bounded and described as follows:

Beginning at a point on the northerly line of Sacramento street, 55 feet 11 inches distant westerly from the intersection of Sacramento and Market streets; thence at right angles northerly 59 feet 9 inches; thence at right angles westerly and parallel with Sacramento street 46 feet; thence at right angles northerly 59 feet 9 inches to the southerly line of Commercial street; thence at right angles easterly and along the southerly line of Commercial street 38 feet 4 inches; thence northerly at right angles with Market street 13 feet 7½ inches; thence easterly at right angles with last line 63 feet 6 inches; thence southerly 72 feet 21 inches; thence easterly and parallel with Market street 84 feet; thence southerly at right angles with last line 40 feet 11 inches; thence westerly and nearly parallel with Market street 83 feet 6 inches to a point distant $35\frac{6}{12}$ feet northerly from the northerly line of Market street continued; thence southerly at right angles to Market street 35 feet 6 inches to the northerly line of Market street; thence westerly along the northerly line of Market street 85 feet, to its intersection with Sacramento street; thence westerly and along the northerly line of Sacramento street 85 feet 11 inches to the place of beginning.

V. That the easterly portion of said tract of land described as follows:

Beginning at a point on the northerly line of Market street, 18 feet 6 inches distant from the intersection of Market and Sacramento streets; thence at right angles northerly 147 feet 7 inches; thence east-
5 erly at right angles with last line and parallel with Market street 63 feet 6 inches; thence southerly at right angles with last line 72 feet 2 inches; thence easterly and parallel with Market street 84 feet; thence southerly at right angles with last line 40 feet 11 inches; thence westerly at right angles with last line and nearly parallel with Market street 83 feet 6 inches, to a point distant $35\frac{6}{12}$ feet northerly from the northerly line of Market street, continued; thence southerly at right angles to Market street 35 feet 6 inches to the northerly line of Market street; thence westerly along the northerly line of Market street 66 feet 6 inches to the point of beginning, is covered with the tide-waters of the Bay of San Francisco, excepting as it has been reclaimed by your orator and his predecessors in estate, in manner and form as follows, that is to say, the last-described piece of land has been piled, and capped, and constructed into a wharf for the lading and unlading of vessels, and has been so constructed and continuously used as a wharf

by your orator and his predecessors in interest and estate for 14 years next preceding the 14th day of March, 1867, and next preceding the acts of defendants hereinafter complained of, and for the said 14 years your orator and his predecessors in interest and estate have, without interruption, or the pretence of any claim on the part of any one whomsoever, used and enjoyed the said wharf, and employed the same for the lading and unlading of vessels, and for the storage of wood, coal, grain, & merchandize thereon, and charged and received wharfage from vessels lading and unlading thereat for his and their own use and bene-
6 fit, and took and enjoyed all the emoluments, profits, franchise, easements, and rights arising from the use thereof as a wharf. And your orator hereunto annexes a diagram of the said property, being drawn from a survey thereof, made by the official surveyor of the said city and county of San Francinco, which he prays may be taken as a part of his bill of complaint, with leave to refer thereto as *as* often as may be necessary. That said wharf so as aforesaid constructed and maintained by your orator's predecessors in interest was surrounded by the tide-waters of the Bay of San Francisco, of sufficient depth for the admission of vessels of all classes accustomed to arrive at, and depart from, the port of San Francisco, and so as to afford easy access to said wharf, and contained, upon its various sides and fronts, landing-space for vessels to the amount of $316\frac{1}{12}$ feet, as is more fully shown by reference to the diagram hereunto annexed.

That your orator and his predecessors in interest and estate, have been and were accustomed to receive, from some time in the year A. D. 1853, until the commission of the grievances hereinafter mentioned, large monthly sums, to wit, $250 per month, as wharfage from said wharf so erected and used by your orator, his predecessors, and grantors, and so as aforesaid owned by your orators.

VI. That your orator and his predecessors in interest and estate have been the owners in fee-simple, and in the exclusive, open, and notorious possession of the said lands hereinbefore described, together with the franchises and easements to them belonging and appertaining, for 14 years last past; that, during said period of 14 years, there
7 has not been any adverse claim or pretension of claim thereto, or to any part thereof, upon the part of any other person, corporation, or body politic whomsoever; that, if there is any such adverse claim, your orator is advised, and believes and charges, that he is protected from the same by operation of a law of the State of California, entitled "An act defining the time of commencing civil actions," and that, by virtue of said act, any claim or pretended claim, either against the right of your orator to said land or against the right of your orator to the said franchises and easements annexed thereto, to wit, the right of receiving vessels at said wharf, and of charging and collecting tolls and wharfage therefor, is forever barred.

And against any such claim or pretended claim which may be set up or alleged against the right of your orator, your orator charges and pleads that the said claim or right or title, if any there be, did not accrue within ten years next before the commencement of this action, nor within ten years next before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within ten years and that the same is forever barred.

And your orator further pleads and charges that any claim or pretended claim which may be set up or alleged against the rights of your orator in the premises, that such pretended claim or right or title, if any there be, did not accrue within five years next before the commence-

ment of this action, nor within five years before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within five years, and that the same is forever barred.

8 And your orator further pleads and charges that any claim or pretended claim which may be set up or alleged against the rights of your orator in the premises, such pretended claim or right or title, if any there be, did not accrue within four years next before the commencement of this action, nor within four years next before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within four years, and that the same is forever barred.

And your orator further pleads and charges that any claim or pretended claim which may be set up or alleged against the rights of your orator in the premises, such pretended claim or right or title, if any there be, did not accrue within three years next before the commencement of this action nor within three years next before the commencement of the grievances hereinafter charged and alledged, and that no action has been brought therefor within three years, and the same is forever barred.

Your orator further charges and avers that while he and his predecessors in interest and estate were thus, as hereinbefore alleged, in the quiet and peaceable possession and enjoyment of said land and wharf, and of the franchises and easements thereunto annexed, and in the reception of the tolls, gains, and profits arising therefrom, the said defendants, on the 14th day of March, 1867, intending to wrong and defraud your orator in the premises, entered upon the tide-waters of the Bay of San Francisco, at a point near to the wharf of your orator, where it

9 was necessary that the said tide-waters should be kept free and clear from all obstructions, in order that vessels might have access to your orator's wharf, and drove piles therein, from a point on the diagram hereto annexed, marked C, to the point marked P; from thence to the point marked E, and from the point marked F to the point marked G, and from thence to the point marked H; and have capped and planked over said piles, making a continuous erection of piles and planks over the space above described, and have shut in and enclosed all of the landing space of your orator's wharf, with the exception of 40 feet 11 inches of the extreme easterly front, thereof, viz., the front colored yellow on said diagram, so that no vessels have since said day had, nor can any vessels hereafter have, access to said wharf so as aforesaid erected and maintained by your orator and his predecessors and grantors in estate and interest, excepting the $40\frac{11}{12}$ feet thereof above excepted, and have kept up and maintained, and the said piles, capping, and planking, the said defendants do still keep up and maintain as aforesaid erected by defendants.

And your orator avers and charges that the said erections so as aforesaid made and maintained by said defendants are a nuisance to your orator and of great damage to the property of your orator and to his enjoyment of the same; that thereby your orator is deprived of the rents and emoluments which he and his predecessors in interest and estate had been theretofore accustomed to collect; and that nearly the whole of the said franchises and easements, rights of toll and wharfage have been destroyed by said wrongful action of the said defendants.

10 Your orator further shows and charges that the said defendants sometimes pretend that they are acting under and by virtue of

the authority of an act of the legislature of the State of California, entitled, "An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco, passed April 24th, 1863, and of an act amendatory thereof, passed March 5th, 1864. Whereas your orator charges the direct contrary thereof to be the truth; and that said acts of the legislature confer no right upon said defendants to take away and destroy the franchises and easements belonging to your orator or to commit the nuisances against your orator hereinbefore alleged and charged; and that the acts of said defendants, as hereinbefore charged, are all illegal, invalid, and without any authority whatsoever. All which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matter' of this and like nature are properly cognizable, and that the said defendants, on being served with a copy of this bill may be bound by all the proceedings in this cause; and that your honor may order and decree that the said erections of said defendants hereinbefore alleged as a nuisance against your orator, and of great damage to his said property, franchises, and easements, and that it be adjudged and decreed that the said defendants shall abate and remove the same within a short time, to be fixed
11 by your honor in the said decree; and that your orator may have such other and further relief as the nature of his case requires and to your honor shall seem meet: May it please your honor to grant unto your orator writs of subpœna, to be directed to said James T. Laidley, Stephen S. Tilton, and C. L. Taylor, and their confederates, when discovered, thereby commanding them, and every of them, at a day certain and under a certain pain therein to be limited, personally to be and appear before your honor in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to and abide such further order, direction, and decree therein as to your honor shall seem meet; and your orator shall ever pray.

PATTERSON, WALLACE, AND STOW,
Solicitors for Complainant.

S. HYDENFELDT,
Of Counsel for Complainant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Adolph C. Weber, being duly sworn, states upon oath that he is the plaintiff named in the foregoing complaint; that the same is true of his own knowledge, except as to those matters therein stated on his information or belief, and, as to those matters, he believes it to be true.

ADOLPH C. WEBER.

Sworn to before me November 7th, 1867.

GEO. E. WHITNEY,
Com'r U. S. Circuit Court, Dist. of California.

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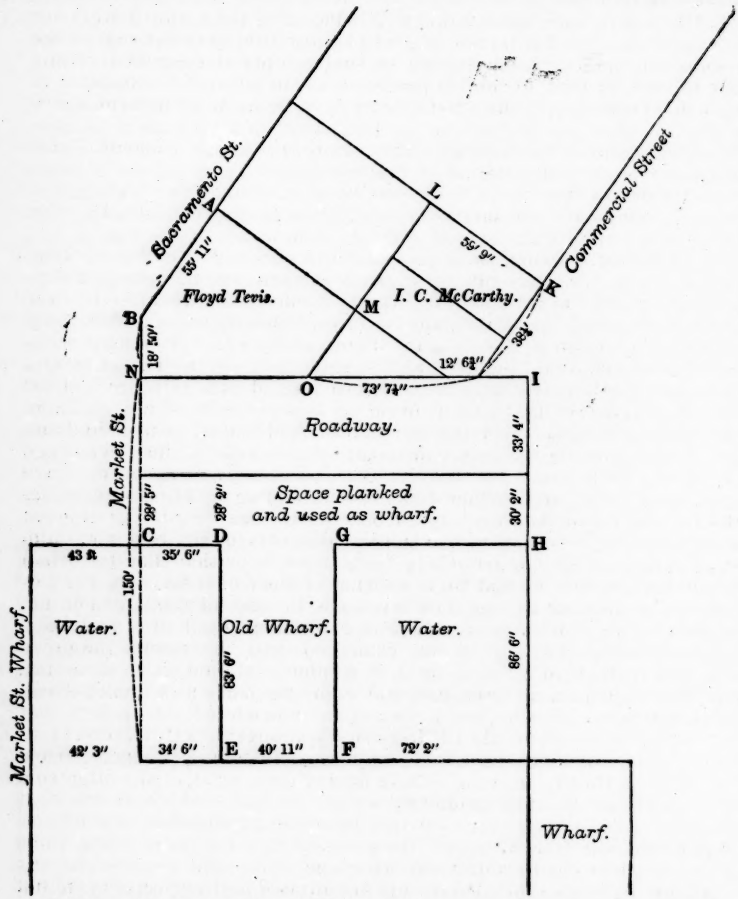

(Endorsed:) Filed November 7th, 1867. Geo. E. Whitney, clerk. By S. Neall, D. C.

13 *Answer.*

In the circuit court of the United States for the district of California.

ADOLPH C. WEBER, COMPLAINANT,
vs.
STEPHEN S. TILTON AND JAMES T. LAIDLEY, impleaded with C. L. Taylor, composing the board of State harbor commissioners, defendants. } Answer.

The defendants, Stephen S. Tilton and James T. Laidley, saving and reserving to themselves all and all manner of exceptions to the com-

plaint herein for the errors therein contained, answer thereto each for himself, as follows:

I. He denies, upon information and belief, that the plaintiff is or ever was the owner, or that he has or ever had any title to or interest in the premises in the fourth subdivision of said complaint described, or any part thereof, or that he or his predecessors, in interest or estate, have been the owners, or in the quiet or exclusive, or open, or notorious possession of all or any part of the tract or parcel of land in said 4th subdivision described, for fourteen years before the commencement of this action, or for any other period of time whatever.

II. He denies that the easterly portion of said tract as described in subdivision V of said complaint is, or at the commencement of
14 this action was, covered with the tide-water of the bay of San Francisco, except as it has or had been reclaimed by the complainant or his predecessors in estate; and, upon information and belief, he denies that either the plaintiff, or his predecessors in interest, ever reclaimed any portion of the said premises, either by piling and capping the same, as stated in the said complaint, or in any other manner whatever; or that the said plaintiff, or his predecessors in interest or estate, or any of them, for fourteen years preceding March 14th, 1867, or for any other time, without interruption or the pretence of any claim by anyone or otherwise, used and enjoyed the said wharf, or used and employed the same for the lading or unlading of vessels, or for the storage of wood, coal, grain, or merchandize thereon; or that they have charged or received wharfage from vessels landing or lading or unlading thereat, for his or their own use or benefit, or took or used or enjoyed all the emoluments, profits, franchises, easements, or rights arising from the use thereof as a wharf or any part thereof; or that they have had any right thereto; or that they or either of them ever had any right or title to, or interest in, the said premises in said 5th subdivision described, or any part thereof, except that the same was and is a part of a public street in the city of San Francisco, and the complainants, in common with all other citizens, and residents of said city, have and had the right to pass over, use, and enjoy the same as a public street. And, further answering, he denies, upon information and belief, that
15 the plaintiff, or his predecessors in interest or estate, or any or either of them, have been or were accustomed to receive, from some time in the year 1853, or for any time, $250, or any other sum per month, as wharfage from said wharf; or that said wharf was or is owned by the complainant, or that he or any predecessor or predecessors in interest, erected or used the same, or that they or either of them ever had any right to collect any wharfage upon said premises or any part thereof; and these defendants are advised and respectfully submit and insist that, if any sum of money whatever has been collected by the plaintiff, or his predecessors, for wharfage upon said premises, that the same had been collected unlawfully, and without any right to demand or receive the same.

He denies that the complainant or his predecessors, in interest or estate, or any of them, have been the owner in fee-simple or otherwise, or in the exclusive or open or notorious possession of the lands in the said complaint described, or of any part thereof, or of the franchises or easements to them belonging or appertaining, or any part thereof, for fourteen years before the commencement of this action, or for any other time; or that during said period of fourteen years, or at any time, there has not been any adverse claim, or pretension of claim to the same, and to and every part thereof, against the pretended claim of the complain-

ant upon the part of any other person or corporation or body politic; or that the title thereto, hereinafter mentioned and set forth, is barred, or that the complainant is protected in his pretended claim thereto. by the act defining the time for the commencement of civil actions
16 in said complaint referred to, or by any other act or law, or that the rights thereto, hereinafter mentioned and set forth, are in any manner barred by said statute or any of the provisions thereof, or that the rights hereinafter mentioned and set forth did not accrue within five years next before the commencement of this action, or within five years before the happening of the pretended grievances in the said complaint mentioned, or that the said rights are forever or in any manner barred, or that the rights and claims hereinafter mentioned did not accrue within five years next before the commencement of this action, or within five years before the commencement of the pretended grievances in the complaint charged or alleged, or that the rights and claims hereinafter mentioned are forever or in any manner barred by the said or by any statute of limitations or otherwise, or that the said rights and claims hereinafter mentioned did not accrue within four years next before the commencement of this action, or within four years before the commencement of the pretended grievances in said complaint charged or alleged, or that said rights and claims are forever or in any manner barred by any statute of limitations or otherwise, or that the claim, right, and title, hereinafter mentioned, did not accrue within three years next before the commencement of this action, or within three years next before the pretended grievances in the complaint charged or alleged, or that the same are forever or in any manner barred by any statute of limitations or otherwise.

IV. These defendants impleaded, as aforesaid, each for himself, denies that the said plaintiff or his predecessors in interest or estate,
17 were in the quiet or peaceable possession or enjoyment of said land or wharf, or of the alleged franchises or easements in said complaint alleged, or any of them; or in the reception of the tolls, gains, or profits arising therefrom, on the 14th day of March, 1867, or at any time; or that then or at any time these defendants or either of them, intending to wrong or defraud the complainant in the premises, or otherwise, entered upon the tide-water of the bay of San Francisco at a point near the wharf claimed by complainant, or at any point, and drove piles therein, as alleged in the complaint, or otherwise, or capped or planked the same, or shut in any part of the landing space or wharf of the complainant; or that they or either of them have kept up or maintained the said alleged piles, capping, or planking, or any part thereof, or do still keep up or maintain the same or any part thereof; or that they or either of them, at any time or place, committed all or any of the grievances in the complaint alleged, or any part thereof; or that said erections in the complaint mentioned were made or maintained by them or either of them; or that the same are or ever were a nuisance to the complainant, or a great or any damage to any property of the complainant; or that said complainant had any property there to be damaged; or that his enjoyment thereof was in any manner interfered with by these defendants, or either of them; or that he has been or is deprived of any rents or emoluments to which he had any lawful or valid or any claim; or that he or his predecessors in interest had been theretofore accustomed to collect, or that nearly the whole or any
18 part of the pretended franchises, easements, rights of toll, or wharfage, or any of them, have been destroyed by said pretended wrongful action of these defendants or otherwise.

V. For a further answer herein, the defendants deny that they, with the said C. L. Taylor, do, or at the commencement of this action did, compose the board of State harbor commissioners; but, on the contrary, they allege that said board is, and then was, *then* composed of Stephen S. Tilton, James T. Laidley, and James H. Cutter, and they are advised that the said James H. Cutter is a necessary party to this action, and they set up his non-joinder as a defence herein.

VI. Further answering, say defendants allege that, all that portion of the premises in the complaint described that lies east of the west line of the roadway on the diagram attached to said complaint, and bounded by the north on Commercial street and wharf, on the south by Market street and wharf, and on the east by a line parallel to the west line of said "roadway," 137½ feet easterly therefrom, is, and for many years last past, has been a part of East street—a public street in the city of San Francisco, dedicated and appropriated to the public use; that the said eastern line thereof is the line of the water front of the city of San Francisco, as established by the act of the legislature of the State of California, passed March 26th, 1851; that, as these defendants are informed and believe, neither the complainant nor any of his alleged predecessors or grantors ever were the owners thereof, or
19 of any part of the same, or ever had any right to the use of the same or any part thereof, except that, in common with other citizens, and in subordination to the laws governing the same, they had the right to the use thereof as a public thoroughfare or street; and that if they or either of them ever occupied the same or any part thereof, as alleged in the complaint or otherwise, except as a street, that the same was without right, in violation of law, and created no right on their part to continue such unlawful occupation or use.

That, by virtue of the act of the legislatureof the State of California, entitled "An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco, passed April 24th, 1863, the sole control of the water-front of said city, including the portion before mentioned, between Market and Commercial wharves, and the sole right to collect wharfage, dockage, or tolls therefrom or thereon, was vested in the board of State harbor commissioners, created by said act; and by the 20th section of said act it was made a disdemeanour for any person, not having authority from said commissioners, or a valid lease of some portion of said water-front, to collect any wharfage, dockage, or tolls upon any portion of said water-front, or in any manner to obstruct the same.

That neither said complainant nor any of his alleged predecessors or grantors, had then, or at any time, any valid lease of the said portion of the water-front or any part thereof, or any consent or authority from said commissioners to collect any wharfage, dockage, or tolls
20 upon the said water-front, or upon the said premises in the complaint described or any part thereof; that the sum of $250 per month, collected by the complainant, as alleged in the complaint, was and is by law payable only to the board of State harbor commissioners; and these defendants pray that an account may be taken of the time during which the same has been received as alleged in the complaint, and the complainant decreed to pay the same to the said board.

VII. These defendants, further answering, each for himself, says that, by the act of the legislature of the State of California, entitled "An act amendatory and supplementary to an act entitled 'An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco, approved April 24th, 1863,'

approved March 6th, 1864, East street was widened to 150 feet, and the board of State harbor commissioners were empowered and directed to construct the outer half of said street, the same being the easterly 75 feet of the premises in the diagram attached to the complaint herein described; that, in obedience to said statute, said board of State harbor commissioners, in the name, and for the account, and by the authority of the people of the State of California, did, on or about the 14th day of March, 1867, cause the said street to be widened, & the outer half thereof to be capped and piled, and the same since has been and yet is the property of, and in the possession of, the said people, and wharfage, dockage, and tolls have been, and yet are, collected therefrom on their account as required by law; that the same is the
21 same transaction referred to and described in the complaint, and therein wrongfully alleged to have been done by these defendants in violation of the pretended rights of the plaintiff; and these defendants aver that the said people of the State of California, have at all times heretofore been, and yet are, the owners of the said line of the water-front as established by the act of March 26th, 1851, and of the whole of the bay of Francisco, and of the land thereunder outside of said line, and have hitherto had, and yet have, full right to control the same.

And they deny that the plaintiff, his predecessors, or grantors, or either or any of them, ever had any right to interfere therewith or to collect any tolls, wharfage, or dockage thereon, or that the said erection or the said alleged grievances are a nuisance to the plaintiff, or that he has any right to have the same or any part thereof removed or abated, or that these defendants or either of them have any power to abate the same, or that they or either of them are proper parties to this action, or that the plaintiff has no remedy at law for the grievances alleged in the complaint, but, on the contrary thereof, they aver that he has full and adequate remedy at and by the strict rules of the common law for all the alleged grievances in the complaint, and they pray, for that reason, the complaint filed herein may be dismissed.

VIII. These defendants, further answering, each for himself, says that he is informed and believes, and charges the truth to be that the plaintiff is not the real party in interest in this action, or in the matter in the complaint alleged; that George T. Marye, a resident and citizen of the State of California, is the real party in interest for whose benefit this action is prosecuted, and that if any pretended transfer has been made to the plaintiff, that the same is not in good faith, but that the said
22 alleged claims, and all and every of them, as these defendants are informed and believe, yet belong to said George T. Marye, and that this action is prosecuted and conducted by him for his own benefit, and at his own expense; and these defendants pray that this action may be dismissed because not prosecuted in the name of the real party in interest, and because this court has no jurisdiction of the alleged causes of action in the complaint set forth as between the said George T. Marye, the real party in interest, and these defendants.

IX. These defendants, further answering, deny that the said acts of the legislature of the State of California, passed April 24th, 1863, and March 5th, 1864, in the said complaint more particularly mentioned, confer no right to make the improvements and widen said East street as hereinbefore mentioned, or to do all and singular the acts in the said complaint described as having been done by the defendants; but, on the contrary thereof, they aver that the same were fully authorized and directed by said acts; that, in pursuance of the directions thereof,

the said board of State harbor commissioners did widen East street, and cause the said piles to be driven, and capped, and planked, as it was their lawful duty and right to do, and that the same are the alleged wrongs and grievances in the complaint erroneously alleged to have been committed by these defendants; and these defendants are advised and respectfully submit and insist that the said Board of State Harbor Commissioners is a necessary party defendant to this action, and they pray that the same may be dismissed by reason of said
23 board not having been made a party hereto.

X. These defendants, further answering, deny that the piling capping, and planking, by the said Board of said State Harbor Commissioners as aforesaid, or any of the acts and doings alleged in the complaint to be a nuisance to the plaintiff, and such a nuisance or in any manner a wrong or injury to any right of the plaintiff, or that he has any right to have the same abated, or to all or any part of the relief in the complaint demanded, or to any relief whatever in this action; and they deny, all and singular, the alleged wrongs, grievances, and injuries in the said complaint set forth, and pray that the complaint herein may be dismissed, and that they may have judgment against the said plaintiff for the costs of this action.

EDWARD TOMPKINS,
Solicitor for Defendants, Tilton & Laidley.

GEORGE BARSTOW,
of Counsel for said Defendants, Tilton and Laidley.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Stephen S. Tilton and James Laidley, being severally duly sworn, each for himself, says that he is one of the defendants above named; that he has heard the foregoing answer read, knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated upon the information and belief of the defendants,
24 and as to those matters he believes it to be true.

S. S. TILTON.
JAMES LAIDLEY.

Subscribed and sworn this 4th day of February, 1868, before me.
A. D. SMITH,
Comm'r U. S. Circuit Court Dist. California.

(Endorsed:) Service admitted February 4th, 1868.
PATTERSON, W. & STOW,
Attorneys for Plaintiff.

Filed, February 4th, 1868.
GEO. E. WHITNEY, *Clerk.*
By S. NEALL, *D. C.*

25 *Stipulation to am'd complaint.*

In the circuit court of the United States for the district of California.

ADOLPH C. WEBER
vs.
JAMES LAIDLEY AND OTHERS.

It is stipulated that the plaintiffs may amend their complaint herein by striking out the individual names of the defendants, and inserting

"The Board of State Harbor Commissioners," as defendants; that said board may amend the answer of the defendants, Laidley and Taylor, herein within 30 days, if they shall be so advised; and if not so amended, their said answer shall be considered as the answer of said board, and shall be considered to be amended so as to make it their answer in form as well as in substance; and that the time of this action be continued until after Judge Fields' return from Washington.

EDWARD THOMPKINS,
Sol'r for Def'ts Laidley & Taylor & for Board of State Harbor Com'rs.
PATTERSON, WALLACE AND STOW,
For Complainant.

(Endorsed:) Filed 15th October, 1868. Geo. E. Whitney, clerk.

26 *Stipulation amending complaint, &c.*

In the circuit court of the United States for the district of California.

ADOLPH WEBER
vs.
JAMES T. LAIDLEY ET AL.

The respective parties hereto stipulate as follows:

1. This cause shall pass the present term of this court without prejudice.
2. The plaintiff may amend his complaint by making Ja's H. Cutter a party defendant in place of C. L. Taylor.
3. If said Cutter desires to amend, he may do so within thirty days; if not, the answer of said Taylor shall be taken as the answer of said Cutter.
4. The complaint and answer shall be deemed amended so as to give effect hereto without either party being required to file amendments, unless they elect so to do.

San Francisco, July 6, 1868.

(Signed) PATTERSON, WALLACE & STOW,
For Pl'ff.
EDWARD TOMPKINS, *Att'y for Def'ts.*

27 (Endorsed:) Filed July 14, 1868. Geo. E. Whitney, clerk, per H. F. Lardner, D. C.

28 *Amended complaint.*

In the circuit court of the United States for the district of California.

ADOLPH C. WEBER, COMPLAINANT,
vs.
THE BOARD OF STATE HARBOR COMMISSIONERS, defendants.
} Complaint in equity.

To the hon. the judge of the circuit court of the United States for the district of California:

Your orator, Adolph C. Weber, of the city and county of San Francisco, State of California, complaining, respectfully showeth:

I. That your orator is not a citizen of the United States; but, on the

contrary, is a citizen of and native of Bavaria, Germany, and never has been naturalized as a citizen of the United States.

II. That the defendant, the Board of State Harbor Commissioners, is a citizen of the State of California, and of the United States, and resident within said State of California.

III. That the property and rights of property hereinafter described are situate in the city and county of San Francisco, in said State.

IV. That for (14) fourteen years last past your orator and his predecessors in interest and estate hath and have been the owners and in the quiet, exclusive, open, and notorious possession of all and singu-
29 lar that tract and parcel of land lying and being in the city and county of San Francisco, California, bounded and described as follows: Beginning at a point on the northerly line of Sacramento street, 55 feet 11 inches distant westerly from the intersection of Sacramento and Market streets; thence at right angles northerly 59 feet 9 inches; thence at right angles westerly and parallel with Sacramento street 46 feet; thence at right angles northerly 59 feet 9 inches to the southerly line of Commercial street; thence at right angles easterly and along the southerly line of Commercial street 38 feet 4 inches; thence northerly at right angles with Market street 13 feet 7½ inches; thence easterly at right angles with last line 63 feet 6 inches; thence southerly 72 feet 2 inches; thence easterly and parallel with Market street 84 feet; thence southerly at right angles with last line 40 feet 11 inches; thence westerly and nearly parallel with Market street 83 feet 6 inches to a point 35 $\frac{6}{12}$ feet northerly from the northerly line of Market street continued; thence southerly at right angles to Market street 35 feet 6 inches to the northerly line of Market street; thence westerly along the northerly line of Market street 85 feet to its intersection with Sacramento street; thence westerly and along the northerly line of Sacramento street 55 feet 11 inches to the place of beginning.

V. That the easterly portion of said tract of land, described as follows: Beginning at a point on the northerly line of Market street 18 feet 6 inches distant from the intersection of Market and Sacramento streets; thence at right angles northerly 147 feet 6 inches; thence easterly
30 at right angles with last line and parallel with Market street 63 feet 6 inches; thence southerly at right angles with last line 72 feet 2 inches; thence easterly and parallel with Market street 84 feet; thence southerly at right angles with last line 40 feet 11 inches; thence westerly at right angles with last line and parallel with Market street 83 feet 6 inches; thence southerly at right angles to Market street 35 feet 6 inches to the northerly line of Market street; thence westerly along the northerly line of Market street 66 feet 6 inches to the point of beginning, is covered with the tide waters of the Bay of San Francisco, excepting as it has been reclaimed by your orator and his predecessors in estate in manner and form as follows, that is to say, the said last described piece of land has been piled and capped, and constructed into a wharf for the loading and unloading of vessels, and has been so constructed and continuously used as a wharf, by your orator and his predecessors in interest and estate, for (14) fourteen years, next preceeding the 14th day of March A. D. 1867, and next preceeding the acts of defendants hereinafter complained of, and for the said (14) fourteen years your orator and his predecessors in interest and estate have, without interruption, or the pretence of any claim on the part of any one whomsoever, used and enjoyed the said wharf, and employed the same for the lading and unlading of vessels, and for the storage of wood, coal, grain, and merchandise thereon, and charged and received wharf-

age from vessels landing and lading and unlading thereat for his and their own use and benefit, and took and enjoyed all the emoluments, profits, franchises, easements, and rights arising from the use thereof as a wharf.

31 And your orator hereunto annexes a diagram of the said property being drawn from a survey thereof made by the official surveyor of the said city and county of San Francisco, which he prays may be taken as a part of his bill of complaint with leave to refer thereunto, as often as may be necessary.

That said wharf, so as aforesaid constructed and maintained by your orator's predecessors in interest, was surrounded by the tide-waters of the bay of San Francisco of sufficient depth for the admission of vessels of all classes accustomed to arrive at and depart from the port of San Francisco, and so as to afford easy access to said wharf, and contained upon its various sides and fronts landing spaces for vessels, to the amount of $316\frac{1}{2}$ feet, as is more fully shown by reference to the diagram hereunto annexed.

That your orator and his predecessors in interest and estate have been and were accustomed to receive from some time in the year A. D. 1853, until the commission of the grievances hereinafter mentioned, large monthly sums, to wit, $250.00 per month, as wharfage from said wharf so erected and used by your orator, his predecessors, and grantors, and so as aforesaid owned by your orator.

VI. That your orator and his predecessors in interest and estate have been the owners in fee-simple and in the exclusive, open, and notorious possession of the said lands hereinbefore described, together with the franchises and easements to them belonging and appertaining for

32 (14) fourteen years last past; that, during said period of 14 years there has not been any adverse claim or pretension of claim thereto or to any part thereof upon the part of any other person, corporation or body politic whomsoever; that if there is any such adverse claim, your orator is advised, and believes, and charges that he is protected from the same by operation of a law of the State of California entitled "An act defining the time for commencing civil actions," and that, by virtue of said act, any claim or pretended claim, either against the right of your orator to said land, or against the right of your orator to the said franchises and easements annexed thereto, to wit, the right of receiving vessels at said wharf and of charging and collecting tolls and wharfage therefor is forever barred.

And against any such claim or pretended claim which may be set up or alleged against the right of your orator, your orator charges and pleads that the said claim, or right, or title, if any there be, did not accrue within ten years next before the commencement of this action, nor within ten years next before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within ten years, and that the same is forever barred.

And your orator further pleads and charges that any claim or pretended claim which may be set up or alleged against the rights of your orator in the premises, that such pretended claim, or rights, or title, if any there be, did not accrue within five years next before the commencement of this action, nor within five years next before the commencement of the grievances herinafter charged and alleged, and that no action has been brought therefor within five years, and that the same is forever barred.

And your orator further pleads and charges that any claim, or pretended claim which may be set up or alleged against the rights

33 of your orator in the premises, such pretended claim, or right, or title, if any there be, did not accrue within four years next before the commencement of this action, nor within four years next before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within four years, and that the same is forever barred.

And your orator further pleads and charges that any claim, or pretended claim, which may be set up or alleged against the rights of your orator in the premises, such pretended claim, or right, or title, if any there be, did not accrue within three (3) years next before the commencement of this action, nor within three years next before the commencement of the grievances hereinafter charged and alleged, and that no action has been brought therefor within three years, and the same is forever barred.

Your orator further charges and avers that, while he and his predecessors, in interest and estate were thus, as hereinbefore alleged in the quiet and peaceable possession and enjoyment of said land and wharf, and of the franchises and easements thereunto annexed, and in the reception of the tolls, gains, and profits arising therefrom, the said defendant, on the 14th day of March, A. D. 1867, intending to wrong and defraud your orator in the premises entered upon the tide-waters of the bay of San Francisco at a point near to the wharf of your orator, where it was necessary that the said tide-waters should be kept free and clear from all obstructions, in order that vessels might have access to your orator's wharf, and drove piles therein from the point on the diagram hereto annexed, markd "C" to the point marked "P," from thence to the point marked "E," and from the point marked "F" to the point marked "G" and from thence to the point marked "H," and have capped and planked over said piles, making a continuous erection of piles and planks over the spaces above described, and have shut in and enclosed all of the landing space of your orator's wharf, with the exception of forty feet eleven inches of the extreme easterly point thereof, viz., the front colored yellow on said diagram, so that no vessels have, since said day, had, nor can any vessel hereafter have, access to said wharf so as aforesaid erected and maintained by your orator and his

34 predecessors and grantors in estate and interest, excepting the $40\frac{11}{12}$ feet thereof above excepted, and have kept up and maintained, and the said piles, capping, and planking, the said defendants still do keep up and maintain as aforesaid erected by defendants.

And your orator avers and charges that the said erections, so as aforesaid made and maintained by said defendants, are a nuisance to your orator, and of great damage to the property of your orator, and to his enjoyment of the same; that thereby your orator is deprived of the rents and emoluments which he and his predecessors in interest and estate had been theretofore accustomed to collect, and that nearly the whole of the said franchises and easements, rights of toll, and wharfage have been destroyed by said wrongful action of the said defendants.

Your orator further shows and charges that the said defendants sometimes pretend that they are acting under and by virtue of the authority of an act of the legislature of the State of California, entitled "An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco," passed April 24, 1863, and of an act amendatory thereof, passed March 5, 1864, whereas your orator charges the direct contrary thereof to be the truth, and that said acts of the legislature confer no rights upon the said defendants to take away and destroy the franchises and easements belonging to your orator, or to commit the nuisances against your orator here-

inbefore alleged and charged, and that the acts of said defendants, as hereinbefore charged, are all illegal, invalid, and without any authority whatsoever.

35 All which actings and doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and like nature are properly cognizable and relievable, and that the said defendants, on being served with a copy of this bill may be bound by all the proceedings in this cause, and that your honor may order and decree that the said erections of said defendants, hereinbefore alleged, are a nuisance against your orator and of great damage to his said property, franchises, and easements, and that it be adjudged and decreed that the said defendants shall abate and remove the same within a short time to be fixed by your honor, in the said decree, and that your orator may have such other and further relief as the nature of his case requires, and to your honor shall seem meet:

May it please your honor to grant unto your orator writs of subpœna, to be directed to said The Board of State Harbor Commissioners and their confederates, when discovered, thereby commanding them and every of them, at a day certain and under a certain pain therein to be limited, personally to be and appear before your honor in this honorable court, and then and there, full, true, and perfect and direct answer make to all and singular the premises; and further, to stand to and perform and abide such further order, direction, and decree therein

36 as to your honor shall seem meet. And your orator shall ever pray.

PATTERSON, WALLACE & STOWE,
Solicitors for Complainant,

S. HEYDENFELDT,
Of Counsel for Complainant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Adolph C. Weber, being duly sworn, states upon oath, that he is the plaintiff named in the foregoing complaint; that the same is true, of his own knowledge, except as to those matters therein stated on his information or belief, and as to those matters, he believes it to be true.

Sworn to before me this Nov., 1867.

(Endorsed:) Filed Nov. 30, 1869. Geo. E. Whitney, clerk, by H. F. Lardner, D. C.

37 *Amended answer.*

In the circuit court of the United States for the district of California.

ADOLPH C. WEBER, COMPLAINANT,
v.
THE BOARD OF STATE HARBOR COMMISSIONERS, defendants.

The defendant, saving and reserving all and all manner of exception to the complaint herein for the errors therein contained, for answer thereto, says as follows:

I. Denies, upon information and belief, that *that* the plaintiff is, or ever was, the owner, or that he has, or ever had, any title to, or interest in the premises in the 4th subdivision of said complaint described, or any part thereof; or that he or his predecessors in interest or estate, have been the owners, or in the quiet, or exclusive, or open, or notorious possession of all or any part of the tract or parcel of land, in said 4th subdivision described, for fourteen years before the commencement of this action, or for any other period of time whatsoever.

II. Denies that the easterly portion of said tract, described in subdivision V of said complaint is, or at the commencement of this action was, covered with the tide-water of the bay of San Francisco, except as it has been reclaimed by the complainant or his predecessors in estate; and, upon information and belief, he denies that either the plaintiff or his predecessors in interest ever reclaimed any portion of the said
38 premises, either by piling and capping the same, as stated in the said complaint, or in any other manner whatsoever; or that the said plaintiff or his predecessors in interest or estate, or any of them, for fourteen years preceding March 14, 1867, or for any other time, without interruption or the pretence of any claim by any one, or otherwise, used or enjoyed the said wharf, or used or employed the same for the lading or unlading of vessels, or for the storage of wood, coal, grain, or merchandise thereon; or that they have charged or received wharfagefrom vessels landing or lading or unlading thereat, for his or their own use or benefit, or took or used or enjoyed all the emoluments, profits, franchises, easements, or rights arising from the use thereof, as a wharf; or any part thereof; or that they have had any right thereto, or that they, or either of them, ever had any right or title to, or interest in, the said premises in said 5th subdivision, or any part thereof, except that the same was and is a part of a public street in the city of San Francisco; and the complainant and in common with all other citizens or residents of said city have, and have had, the right to pass over, use, and enjoy the same as a public street. And, further answering, he denies, upon information and belief, that the plaintiff or his predecessors in interest or estate, or any or either of them have been or were accustomed to receive, from some time in the year 1853, or for any time, $250, or any other sum per month, as wharfage, from said wharf; or that said wharf was, or is, owned by the complainant, or that he or any predecessor or predecessors in interest, erected or used the same; or that they or either of them ever had any right to collect any wharfage upon said premises or any part thereof; and these defendants are advised, and respectfully
39 submit and insist that if any sum of money whatever has been collected by the plaintiff or his predecessors, for wharfage, upon said premises, that the same has been collected unlawfully and without any right to demand or receive the same.

III. Denies that the complainant or his predecessors, in interest or estate, or any of them, have been the owners, in fee-simple or otherwise, or in the exclusive or open or notorious possession of the lands in the said complaint described, or of any part thereof, or of the franchises or easements to them belonging or appertaining, or any part thereof, for fourteen years before the commencement of this action, or for any other time; or that, during said period of fourteen years, or at any time, there has not been any adverse claim or pretension of claim to the same and to any and every part thereof, against the pretended claim of the complainant upon the part of any other person, or corporation, or body politic; or that the title thereto hereinafter mentioned and set forth is barred; or that the complainant is protected in his pretended claim

thereto by the act defining the time for the commencement of civil actions in said complaint referred to, or by any other act or law; or that the rights thereto hereinafter mentioned and set forth are in any manner barred by said statute or any of the provisions thereof, or that the right hereinafter mentioned and set forth did not accrue within ten years next before the commencement of this action, or within ten years before the happening of the pretended grievances in the said complaint mentioned; or that the said rights are forever or in any manner
40 barred; or that the rights and claims hereinafter mentioned did not accrue within five years next before the commencement of this action or within five years next before the commencement of the pretended grievances in the complaint charged or alleged; or that the rights and claims hereinafter mentioned are forever or in any manner barred by the said or by any statute of limitations or otherwise; or that the said rights and claims hereinafter mentioned did not accrue within four years next before the commencement of this action, or within four years before the commencement of the pretended grievances in said complaint charged or alleged; or that said rights and claims are forever or in any manner barred by any statute of limitations or otherwise; or that the claim, right, or title hereinafter mentioned did not accrue within three years next before the commencement of this action, or within three years next before the commencement of the pretended grievances in the complaint charged or alleged; or that the same are forever or in any manner barred by any statute of limitation or otherwise.

IV. These defendants deny that the said plaintiff, or his predecessors in interest or estate, were in the quiet or peaceable possession or enjoyment of said land or wharf, or of the alleged franchises or easements in said complaint alleged, or any of them, or in the reception of the tolls, gains, or profits arising therefrom, on the 14th of March, 1867; or that then or at any time these defendants, or either of them, intending to wrong or defraud the complainants in the premises, or otherwise, entered upon the tide-waters of the bay of San Francisco at a point near the wharf claimed by complainant, or at any point, and drove
41 piles therein, as alleged in the complaint or otherwise, or capped or planked the same, or shut in any part of the landing space or wharf of complainant, or that they, or either of them, have kept up or maintained the said alleged piles, planking, or capping, or any part thereof, or do still keep up or maintain the same or any part thereof; or that they, or either of them, at any time or place, committed all or any of the grievances in the complaint alleged, or any part thereof; or that said erections in the complaint mentioned were made or maintained by them, or either of them, except as hereinafter stated, or that the same are or ever were a nuisance to the complainant, or a great or any damage to any property of the complainant, or that said complainant then had any property there to be damaged, or that his enjoyment thereof was in any manner interfered with by these defendants, or either of them; or that he has been or is deprived of any rents or emoluments to which he had any lawful or valid or any claim, or that he or his predecessors in interest had been theretofore accustomed to collect; or that nearly the whole or any part of the pretended franchises, easements, rights of toll, or wharfage, or any of them, have been destroyed by said pretended wrongful action of these defendants, or otherwise.

V. Further answering, these defendants allege that all that portion of the premises in the complaint described that lies east of the west line of the "roadway" on the diagram attached to said complaint, and

bounded on the north by Commercial street and wharf, on the south by Market street and wharf, and on the east by a line parallel to the west line of said "roadway" and 137½ feet easterly therefrom, is and
42 for many years last past has been a part of East street—a public street in the city of San Francisco, dedicated and appropriated to the public use; that the said eastern line thereof is the line of the water-front of the city of San Francisco, as established by the act of the legislature of the State of California, passed March 26th, 1851.

That, as these defendants are informed and believe, neither the complainant nor any of his alleged predecessors or grantors ever were the owners thereof, or any part of the same, or ever had any right to the use of the same, or any part thereof, except that, in common with other citizens and in subordination to the laws governing the same, they had a right to the use thereof as a public thoroughfare or street; and that if they, or either of them, ever occupied the same, or any part thereof, as alleged in the complaint, or otherwise, except as a street, that the same was without right, in violation of law, and created no right on their part to continue such unlawful occupation or use.

That, by virtue of the act of the legislature of the State of California, entitled "An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco," passed April 24th, 1863, the sole control of the water-front of said city, including the portion before mentioned between Market and Commercial wharves, and the sole right to collect wharfage, dockage, and tolls therefrom or thereon, was vested in the board of State harbor commissioners created by said act; and, by the 20th section of said act, it was made a misdemeanor for any person not having authority from said commissioners or a valid lease of some portion of said water-front to collect any wharfage, dockage, or tolls upon any portion of said
43 water-front, or in any manner to obstruct the same.

That neither said complainant nor any of his alleged predecessors or grantors had then, or at any time, any valid lease of the said portion of the water-front, or any part thereof, or any consent or authority from said commissioners to collect any wharfage, dockage, or tolls upon the said water-front, or upon the premises in the complaint described, or any part thereof; that the sum of $250 per month, collected by the complainant, as alleged in the complaint, was, and is by law, payable only to the board of State harbor commissioners; and these defendants pray that an account may be taken of the time during which the same has been received as alleged in the complaint, and the complainant decreed to pay the same to the said board.

VI. These defendants, further answering, say that, by the act of the legislature of the State of California, entitled "An act amendatory of and supplemental to an act entitled 'An act to provide for the improvement and protection of the wharves, docks, and water-front in the city and county of San Francisco,' approved April 24th, 1863," approved March 5th, 1864, East street widened to one hundred and fifty feet, and the board of State harbor commissioners were empowered and directed to construct the outer half of said street, the same being the easterly 75 feet of the premises in the diagram attached to the complaint herein described; that, in obedience to said statute, said board of State harbor commissioners, in the name and for the account and by the authority of the people of the State of California, did, on or about the 14th of March, 1867, cause the said street to be wid-
44 ened and the outer half thereof to be capped and piled, and the same since has been and yet is the property of and in the posses-

sion of the said people, and wharfage, dockage, and tolls have been and yet are collected therefrom on their account as required by law; that the same is the same transaction referred to and described in the complaint and therein wrongfully alleged to have been done by these defendants in violation of the pretended rights of the plaintiff. And these defendants aver that the said people of the State of California have at all times heretofore been and yet are the owners of the said line of the water front, as established by the act of March 26th, 1851, and of the whole of the bay of San Francisco and of the land thereunder outside of said line, and have hitherto and yet have full right to control the same. And they deny that the plaintiff, his predecessors or grantors, or either or any of them, ever had any right to interfere therewith or to collect any tolls, wharfage, or dockage thereon, or that the said erection or the said alleged grievances are a nuisance to the plaintiff, or that he has any right to have the same, or any part thereof, removed or abated; or that these defendants, or either of them, have any power to abate the same, or that they, or either of them, are proper parties to this action; or that the plaintiff has no remedy at law for the grievances alleged in the complaint; but, on the contrary thereof, they aver that he has full and adequate remedy at and by the strict rules of the common law for all the alleged grievances in the complaint; and they pray that for that reason the complaint filed herein may be dismissed.

45 VII. These defendants, further answering, say, upon information and belief, and charge the truth to be that the plaintiff is not the real party in interest in this action, or in the matters in the complaint alleged.

That George T. Marye, a resident and citizen of the State of California, is the real party in interest, for whose benefit this action is prosecuted, and that if any pretended transfer has been made to the plaintiff, that the same is not in good faith, but that the said alleged claims, and all and every of them, as these defendants are informed and believe, yet belong to said George T. Marye, and that this action is prosecuted and conducted by him for his own benefit and at his own expense. And these defendants pray that this action may be dismissed, because not prosecuted in the name of the real party in interest, and because this court has no jurisdiction of the alleged causes of action in the complaint set forth, as between the said George T. Marye, the real party in interest, and these defendants

VIII. These defendants, further answering, deny that the said acts of the legislature of the State of California, passed April 24th, 1863, and March 5th, 1864, in the said complaint more particularly mentioned, confer no right to make the improvements and widen said East street as hereinbefore mentioned, or to do all and singular the acts in the said complaint described as having been done by the defendants; but, on the contrary thereof, they aver that the same were fully authorized and directed by said acts; that, in pursuance of the directions thereof,

46 the said board of State harbor commissioners did widen East street and cause the said piles to be driven, capped, and planked, as it was their lawful duty and right to do, and that the same are the alleged wrongs and grievances in the complaint erroneously alleged to have been committed by these defendants.

IX. These defendants, further answering, deny that the piling, capping, and planking by the said board of State harbor commissioners, as aforesaid, or any of the acts and doings alleged in the complaint to be a nuisance to the plaintiff, are such a nuisance, or are in any man-

ner a wrong or injury to any rights of the plaintiff, or that he has any right to have the same abated, or to all or any part of the relief in the complaint demanded, or to any relief whatever in this action. And they deny all and singular the alleged wrongs, grievances, and equities in the said complaint set forth, and pray that the complaint herein may be dismissed, and that they may have judgment against the said plaintiff for the costs of this action.

SOL. A. SHARP,
Solicitor for Defendants.

Verification of the foregoing answer is waived, and this answer may be filed with the same force and effect as if verified.
Nov. 29, 1869.

W'M H. PATTERSON,
Sol. for Pl'ff.

(Endorsed:) Filed Nov. 30, 1869. Geo. E. Whitney, clerk. By H. F. Lardner, D. C.

47 *Decree.*

In the United States circuit court for the district of California.

A. C. WEBER
v.
THE BOARD OF STATE HARBOR COMMISSIONERS. } Decree.

This cause having been heretofore tried and submitted to the court, and the court having duly considered the same, and being fully advised therein:
It is ordered and adjudged that the said complainant take nothing by his said action, and that the bill of the said complaint be, and the same is hereby, dismissed.
It is further ordered and decreed that defendants recover of complainant their costs of suit.

MATTHEW P. DEADY, *Judge.*

(Endorsed:) Filed and entered this 3d January, 1871, as of 11th December, 1869, by order of court. L. S. B. Sawyer, clerk.

48 *Judge's notes of trial.*

U. S. circuit court, district of Cal., Monday, Nov. 29, 1869.

WEBER
vs. } In equity.
LAIDLEY.

Patterson states case for pl'ff.
Sol. Sharp states case for def't.

Pl'ff's testimony.

G. T. MARYE.
Have lived in San Francisco since 1849; known premises since 1853. (Shown map in pleading.) Old wharf built by me in 1854, about $\frac{3}{4}$, or

south part. Not long after, in same year, McCarty built rest of it. At town sale, in 1853, I bought water lots 121, '2, marked Lloyd Tevis. McCarty bought at same time a small triangle, not marked on map—fronts on roadway. After I built on my lots, I built a roadway in front. McCarty soon built a continuation of the roadway, so that it extended between Market and Commercial; roadway built on piles; water ten or twenty feet deep under the roadway. In 1854 commenced at intersection of Market street and roadway, and planked east 28.5; thence north 35.6 f't; thence east 83.6 f't; thence north about 30 feet; thence westerly through the space marked roadway, to the
49 east side thereof. McCarty commenced on east line of yellow map ten feet from center and planked north to the point marked F; thence west to G; thence north to H; thence west to the east line of the roadway. In 1854, between McCarty and myself, we had piled, planked, and capped all the space marked on map as roadway, wharf, and old wharf. We used it as a wharf thereafter. Vessels laid on the north and south side of old wharf, etc., so used by us until taken possession of by harbor commissioners. I and my successors kept it in repair; collected from $125 to $175 per month for use of wharf. McCarty got $125 per month—he had not so much space. Commissioners had advertised to pile from Market street to Clay; commenced work between old wharf and Commercial street, and piled and planked the whole space marked water on either side of the old wharf; rendered the wharf valueless; vessels could not come up on either side. About a year after piling and planking, commissioners made a stone wall on east end of old wharf—piled stone in there. During this time no one claimed the property or disturbed me in the possession or occupation. I occupied, claiming to be owner. Lots marked Tevis and triangle and roadway and wharfs within the ebb and flow of tide-water, about ten or fifteen feet deep, navigable waters of bay. I occupied the property
50 up to 1855, then went away two years. I rented it then and received the rents in my absence; left the property with an agent. When I came back I held the property by myself and tenants; planking on the grade of Market street but a little lower than Commercial; plank ten to twenty feet above low-water, and about five feet above ordinary high-tide; Commercial street then planked out same as now. Also Market street about two hundred feet east of east line of old wharf; got from $125 to $175 for wharf from time of building wharf to time of taking possession by commissioners; after ten years had to recap and pile wharf; that only repairs, and paid out of recipts.

(Stipulated that west line of roadway, the water front in the act of 1851, and the west line of East street, if there be an East street, and that if there be such street that it extends thence east 150 feet.)

Ordinance No. 481, Dec. 5, 1853, for sale and disposition of water-lots.

Deed from city of San Francisco to Marye & Smith, Jan. 16, 1854, for the premises marked "Tevis" on map.

Deed from Marye & Smith to William Smith, same premises, Sept. 20, 1854.

51 Deed from William Smith to Wheelan, same premises, July 10, 1856.

Deed from Whelan to William Smith, same premises, Sept. 14, 1857.

Deed from W. Smith to Brooks, same premises, June 24, 1858.

Act of March 26, 1851, p. 307, ses. laws relating to water-lots, lease of.

Act of May 18, 1853, and of May 1, 1855, sale of reversion of water-lots.

(Stipulated that the commissioners to sell the remainder of water-lots adopted same lines and sub. that commissioners to lease did.)

Deed from Cal. to William Smith, same premises, Nov. 7, 1855, 2d deed, same both for lot Tevis.

Deed from Brooks to Austin Smith, Sept. 9, 1858, same premises.

Deed from Austin Smith to L. Tevis, June 8, 1861, same premises.

52 Deed from city of San Francisco to L. Tevis, Oct. 26, 1865, same premises.

Deed from Tevis to Marye, Oct. 10, 1863, same premises.

Deed from Tevis to Emrick, June 16, 1866, same premises.

Deed from W. Smith et al. to Emerick, Dec. 31, 1866, same premises.

Deed from Emrick to Marye, Ap. 20, 1867, same premises.

Deed from Marye to Weber, Sept. 30, 1867, same premises.

(As to McCarty title, plaintiff puts in same ordinances and acts of assembly,) and also

Deed from Cal. to Grant & McCarty, 7 Nov., 1855, for lot marked on map "McCarty;" 2 deeds same.

S. MASTINOVITCH.

Lived in San Francisco since 1860, corner of East and Market. Know of wharf used by M. and Mc. There when I went there in 1860 and still there. McCarty and Tevis' agent collected tolls there; vessels in the habit of lying at the wharf to load and unload. I was

53 doing business then at corner of East and Market street.

Cross-examination:

Com. doing business there in 1860. In 1860 used to come vessels to wharf; same in 1851,'2; smaller vessels since 1863; some called Sacramento and Market, and some Market and East.

(Stipulated that defendants commenced creating obstructions, 14 March, 1867. Stone-wall commenced since commencement of suit.)

Deed from Cal. to Faulkner, Nov. 17, 1855, for part of same premises—the triangle.

Deed from Faulkner and Jones, Feb. 18, 1856, part of premises.

Deed from Jones to Meegan, June 8, 1858, same premises as last.

Deed from Meegan and Hyman, June 19, 1858, same premises as last.

Deed from city of San Francisco to Grant and McCarty, March 22, 1859.

Confirmatory of former deeds.

Deed from Hyman to Cohen, July 18, 1860, same premises as conveyed to Hyman.

Death of Grant, March 2, 1864; by will devised interest in property to Mary E. Grant, his widow.

54 Deed from city of San Francisco to Mary Grant, May 4, 1864, confirmatory.

Deed from city of San Francisco to McCarty, May 28, 1864, confirmatory.

Deed, same to same, August 11, 1866.

Deed from same to same, same date.

Deed from Cohen and McCarty, Sept. 27, 1866.

Deed from McCarty to Leroy, December 29, 1866.

Deed from McCarty to Burcess, Oct. 9, 1866.

Deed from McCarty and Burcess to Frank, June 10, 1867.

Deed from Frank to Weber, June 11, 1867.

Plaintiff rests, with leave to call a witness as to commencement of user and occupation.

Defendant's testimony.

Offers to show that, under act of March 26, 1851, the Eddy or red-line map was referred to as showing the boundaries and location of East street.

55 Eddy map read in evidence.

Admitted that map one referred to in act of March 26, 1851.

Offer to show in pursuance of ordinance 481, that a survey and map made.

City map showing sub. of city slip property in pursuance of ordinance 481. (Objected to; and read subject to its legal effect.)

Act of assembly, March 5, 1864, creating harbor commissioners, sub. 3468, Hittell's Digest.

Act widening East street, Hittell's Digest; supra.

(Stipulated that Laidley, Tilden and Taylor constituted harbor commissioners at time of committing alleged grievances, and that such persons claimed to do what they did under authority of the acts of the assembly; also that acts do not interfere with navigation of the bay, and that bay is there several miles wide.

Admitted that sales by city made in pursuance of ordnance 481 and Gardner map made in pursuance of same.)

N. C. EFFORD, called by plaintiff:

Lived in city since October, 1860; have known location between
56 Market and Commercial since 1854; known that Marye and McCarty made wharf there in 1854. (Shown map.) Planked over what is marked old map between Sacramento and Commercial. I occupied one of buildings since latter part of 1854 and ever since. Wharf ran out in front of me. Small schooners used to lie on each side, Marye's side leased to Green for use of Sacramento line of vessels. McCarty collected tolls. I am on the lot marked Tevis.

Defendants testimony resumed.

S. S. TILTON, (shown map.)

The wharf structure correct; slip on each side of "old wharf" a narrow one; not so wide as on this map; saw premises before commissioners drove pile; not open as water all the way between old map and Market street; space marked water between old wharf and Market street same as diagram; slip on Commercial street about same; known property since 1863; roadway used as street; space marked wharf I considered part of the roadway, but used to store wood, etc.; sea-wall, top of, thirty-five feet inside of east line of old wharf, but base extends out east; a roadway north of Market street as far as Jackson, but not south of it, prior to 1863; west line of roadway corresponds to west line of what is called East street; east line of East street extends to
57 east end of old wharf. East street extends from Folsom to Pacific. I have always contended that street laid out and established, but I do not claim that open and used by public south of Market; did not go through between Jackson and Pacific. (Shown map of harbor commissioners, 1864.) Map attached to pleadings and called diagram agrees with map as to water spaces north and south of old wharf; communication on East street unbroken between Market and Washington in 1863; from Jackson to Washington piles given way and unsafe; had been used as a street prior to that time: between Jackson and Pacific no communication; portion of East street built on as a wharf; all piling by commissioners within the red line of 1864.

Testimony closed.

Argument.

Hydenfeldt arguendo for compl't; cites limitation act, 3 sec.

Incorporeal right acquired by prescription: Kent, sec., p. 441 mar., 34 Cal. 365; 31 Cal. 585; 24 Cal. 289; 9 Cal. 5; 2 Black, 599; 10 Price Ex. Rep., 378.

Appropriating property: 14 Barb., 405; 13 Wend., 355; 17 John, 125.

Question of street east: 9 Cal., 411; 22 Cal., 11. Read these. Ordinance, 481. Did it create East street? Did not. Prescription
58 good against it anyhow. Harbor act proceeds upon theory that street used but not established.

Sol. Sharp, for def'ts, asks leave to introduce act to sell certain property on water front of San Francisco, April 26, 1858, Sess. Laws of 1858, p. 323. Allowed. Cites sec. 6, 1851.

Ordinance 481 limits the lots to the west side of East street.

Plaintiff could not acquire a title to East street by prescription.

Occupation of the plaintiff; not of the water beside his wharf, but only within the area covered by wharf; act of limitation, State only says will not sue, and may change its mind. The word will not binding upon State. Act of 1863, harbor act changes the will of the State, and that before ten years from the entry of plaintiff in 1854: 1 Grey, 203, 18; 13 Pet., 595; 9 Smedes & Marshal's, 421–31; 13 Seargent & Rawle; 3 P. Chan. R., 318.

Right of party not been tested at law: 37 Penn., 506; 7 John Chan., 315; 27 Cal., 645; 13 Cal., 157; Ib., 190; 5 Cal., 119; 3 John, C., 286.

TUESDAY, *Nov.* 30, 1869.

Sol. Sharp continues the argument for defendants.

When equity will interfere to abate a nuisance: Story's Equity 1,
59 920–6; 9 How., 10; Williard's Equity, 382, 388, 392; Eden In., 259, 1, 2, 3, 4, 5; 269, 1, 2; 270, 1, 23; 13 How., 519; 31 Cal., 119; cited to show that plaintiff acquired nothing beyond the area actually occupied. Read this. 1 Black, 31, 32; 1 McAllister, 227.

Acts of harbor commissioners are by authority of law and cannot be a nuisance: 18 Barb., 243,–45,–7,–8. Read the latter part of this. 9 Barb., 364; 26 N. Y., 287. Read this. 18 Barb., 247–'8; 12 Barb., 628; Con. of nuisance, 3 Black, 220; 3 Barb., 157; 29 Barb., 291.

Recitals in deed as to East street estop the plaintiffs to deny that East street there, 17 Mass., 411. Adverse possession of plaintiff and grantors. Did not commence until harbor commissioners appointed, and must be limited by the recitals in his deeds.

Hydenfelt arguendo for plaintiff.

Power of equity to enjoin a nuisance: 29 Cal., 156; 30 Cal., 379.

Private persons may own wharves: Angell on T. W., 171, chap. vii; 7 Con., 186; 7 McLean, 382; 15 Con., 137.

Case submitted.

(Endorsed:) U. S. circuit court, dist. of California, 529. Adolph C.
Weber vs. James T. Laidley & al. Notes of trial. Filed 15 Dec.,
59½ 1869. Geo. E. Whitney, clerk.

60 *Abstract of various deeds relating to certain city slip-lots.—Index to—*

(Index.)—[Star-paging.]

Grantor.	Page.	Grantee,	Instrument.
City of San Fran'co	1	Marye & Smith	Deed.
Marye & Smith	5	W. Smith	"
W. Smith	7	G. J. Wheelan	"
G. J. Wheelan	9	W. Smith	"
	11		
W. Smith, by P. L. Solaman, U. S. marshal	11	S. H. Brooks	"
Cal, land com'rs	15	W. Smith	"
" " "	19	J. C. Smith et al	"
S. H. Brooks	21	A. E. Smith	"
A. E. Smith	23	L. Tevis	"
City & Co. of San F.	27	" "	"
L. Tevis	29	G. T. Marye	"
" "	31	J. Emeric	"
W. Smith et al	33	" "	"
J. Emeric	35	G. T. Marye	"
G. T. Marye et al	37	A. C. Webber	"
Cal'a land com'rs	41	Grant & McCarthy.	"
" " "	43	"	"
" " "	45	G. H. Faulkner	"
G. H. Faulkner	47	S. L. Jones	"
S. L. Jones	51	J. Meegan	"
J. Meegan	53	B. C. Hyman	"
City & Co. of San F.	55	Grant & McCarthy.	"
P. C. Hyman	57	J. S. Cohen	"
City & Co. S. F'co	59	M. E. Grant	"
" " " "	61	D. C. McCarthy	"
" " " " "	63	" "	"
61 D. C. McCarthy	65	T. Le Roy	Deed.
City & Co. of San F.	67	D. C. McCarthy	"
J. S. Cohen	69		"
D. C. McCarthy	71	M. E. Burckes	"
McCarthy & Burckes	73	J. Frank	"

62 *1 *Abstract of various deeds.*

The city of San Francisco to George T. Marye and J. Caleb Smith. Deed dated January 16th, 1854. Consideration, seventeen thousand five hundred—

Whereas in and by a certain ordinance of the said city of San Francisco, entitled "Ordinance No. 481, to provide for the sale of certain city property," approved December 5th, A. D. 1853.

And whereas the mayor and joint committee on land claims of said city did, in pursuance of said ordinance, on the 26th day of December, 1853, sell at public auction, the land and premises particularly mentioned and described in the first section of said ordinance, having first given ten days' notice of the time and place of such sale by advertisement in three of the daily papers published in the said city, at which sale the premises hereinafter mentioned and described were struck
*2 off to them, the said party [*] of the second part, for the sum of $17,500, that being the highest and best bid therefor. And whereas the said party of the second part have made due payment of the amount so bid by them for the said premises pursuant to the
63 terms of the said ordinance: Now, therefore, this indenture witnesseth that the said party of the first part in consideration of the premises and of the sum of seventeen thousand five hundred , the receipt whereof is hereby acknowledged, &c., doth bargain, sell, and convey unto the said party of the second part, theirs heirs and assigns, forever, all the right, title, interest, estate, claim, and demand, both at law and in equity, as well in possession as in expectancy, of the said city of San Francisco of, in, and to all that certain lot, piece, or parcel of land situate, lying, and being in the said city of San Francisco, and

bounded and described as follows: Commencing 527 feet and 4 inches east of the northeast corner of Drumm & Sacramento streets and on the north line of Sacramento street; thence at right angles northerly 59 feet 9 inches; thence at right angles with the last-mentioned line to the western line of East street; thence southeasterly along said westerly line of East street to its intersection with the northerly line of Market street; thence in a southwesterly direction along the *the* line of Market street to Sacramento street, and thence westerly along the line of
*3 Sacramento street to the point [*] of beginning. This conveyance is made without any covenant or warranty, express or implied on the part of said party of the first part.

In witness whereof the said party of the first part hath hereunto caused their corporate seal to be affixed and these presents to be subscribed by their mayor.

[SEAL.]

C. K. GARRISON,
64 *Mayor of the City of San Francisco.*

Ack'd September 12th, 1854, by C. K. Garrison, mayor of said city, before A. A. Selover, notary public.

Recorded September 13th, 1854, liber 47 of deeds, page 60.

*5 [*] George T. Marye and J. Caleb Smith, to William Smith, of the State of Virginia. Deed dated September 20th, 1854. Consideration $30,000.

Do grant, bargain, sell, alien, remise, release, convey and confirm unto the party of the second part, and to his heirs and assigns, forever, all that certain parcel of land covered by water, situated in the said city of San Francisco, bounded and described as follows: (Same description as in deed City of San Francisco to George T. Marye and J. Caleb
65 Smith. Liber 47 of deeds, page 60, herein before given on page *1 of this abstract.)

Covenant of warranty against grantors and against all and every person and persons lawfully claiming or to claim the same.

Witness: W'm L. Higgins.

*6 [*] Acknowledged September 20th, 1854, before W'm L. Higgins, N. P.

Recorded March 14th, 1855, liber. 51 of deeds, page 367.

*7 [*] William Smith, of Fauquier County, State of Virginia, by his attorney-in-fact, Austin E. Smith, to George J. Whelan. Deed dated July 10th, 1856. Consideration $30,000.

Does grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns forever all that certain parcel of
66 land, covered with water, and being in the city of San Francisco, and described, as follows:

(Same description as in deed City of San Francisco to George T. Marye and J. Caleb Smith; liber. 47 of deeds, page 60, hereinbefore given on page *1 of this abstract.) And the said William Smith hereby covenants, &c., that he is lawfully seized in fee-simple absolute of the above premises, and that the said Smith has a perfect right in law to sell and convey the same; further covenants that he, his heirs, &c., will
*8 warrant forever and defend [*] the said property and premises to said grantee, his heirs, &c., against the claims or demands of any

and all persons whatever both as to the presents as well as any increase value thereof.

(Signed) W. SMITH,
By AUSTIN E. SMITH,
Att'y-in-fact.

Wtness: W. F. Swasey.
(No seal to signature of grantor. Refers to hand and seal.)
Ack'd July 10th, 1856, before W. F. Swasey, N. P.
Recorded July 11th, 1856, liber. 60 of deeds, page 502.

67 *9 * George J. Whelan, of the city and county of San Francisco, to William Smith, of the county of Fauquier, State of Virginia. Deed dated September 14, 1857. Consideration, one dollar.

Doth remise, release and quit-claim unto the said party of the second part, and to his heirs and assigns forever all his right, title and interest, in and to the tracts or parcels of land lying and being in the said city and county, and described as follows: (Same description as in deed City of San Francisco to George T. Marye and J. Caleb Smith,
*10 liber 47 of deeds, page 60, hereinbefore given on page *1 [*10] of this abstract.)

Witness: P. K. Woodside.
Ack'd September 29th, 1857, before Preston K. Woodside, N. P.
Rec'd September 29th, 1857, liber. 71 of deeds, page 401.

68 *11 [*11] William Smith, by Perrin L. Solomon, as United States marshal, for the northern district of California, to Samuel H. Brooks, of the county of San Joaquin, State of California. Deed dated June 24th, 1858. Consideration $5,405.

Whereas, by virtue of an execution issued out of, and made under the seal of the circuit court of the United States, for the districts of California, in and for the northern district, in favor of Dennis J. Oliver, assignee of Daniel C. McGlynn, and against William Smith, attested the 8th day of October, 1857, and to the said United States marshal directed and delivered, commanding him that of the goods and chattels of the said William Smith, in the northern district of California,
*12 he should cause to be made certain [*12] moneys in the said writ specified, and if sufficient goods of the last-named person could not be found that then he should cause the amount of said judg-
69 ment to be made of the lands, &c., whereof the last-named person was seized; and whereas, because sufficient goods and chattels of the last-named person in the said writ could not be found, whereof, he, the said United States marshal, could cause to be made the moneys specified in said writ, he, the said United States marshal, did, in obedience to the said command, levy on, take, and seize, all the estate, right, title, and interest of the said last-named person of, in, and to the real estate, &c., hereinafter particularly set forth and described with the appurtenances; and did, on the 31st day of October, 1857, sell all the right, title, and interest of the said last named person, in, and to the said premises at public vendue, at the doors of the United States court-building, in the city of San Francisco, between the hours of nine in the morning and five in the afternoon of that day, he, having first given notice of the time and place of such sale, according to law; at which sale, the right, title, and interest of the last-named person, in, and to the said premises, were struck off and sold in eleven separate and distinct parcels to Dennis J. Oliver, for the sum of $5,405, he, the said Dennis J. Oliver, being the highest bidder, and being the highest

*13 sum bidden for [*13] the same. Whereupon the said United States marshal, after receiving from said purchaser the said sum of money so bidden, as aforesaid, gave him such certificate as is by law directed to be given, and a certificate of such sale was duly filed
70 in the office of the recorder, &c., and whereas the six month' after such sale thereof have expired without any redemption of the said premises having been made; and, whereas the said purchaser Dennis J. Oliver did, on March 30th, 1858, bargain, transfer, sell and convey all of his right, title, interest, and estate, in and to the lands, tenements, real estate and premises hereinafter set forth and described to Samuel H. Brooks for a valuable consideration, and did authorize the said United States marshal to make a proper deed to said Samuel H. Brooks for said premises: witnesseth, &c., do grant, bargain, sell, convey and confirm unto the said Samuel H. Brooks, his heirs or assigns, all the estate, right, title, and interest of the said person, against whom the said writ of execution has been issued, as aforesaid, of, in, and to all the following described property, all being situated in the city
*14 of San Francisco, to wit, [*14] also that certain lot of land. (Same description as in deed City of San Francisco to George T. Marye and J. Caleb Smith, liber 47 of deeds, page 60, hereinbefore given on page *1 of this abstract.)

Witness: E. V. Joice.
Ack'd June 25th, 1858, before E. V. Joice, N. P.
Rec'd " 30th, " , liber. 78 of deeds, page 318.

71 *15 [*15] The governor of the State of California, the secretary of state, and the controller of state of the State of California, a board, &c., to William Smith. Deed dated November 7th, 1855. Consideration, $50.00.

Do grant, bargain, sell, and quit-claim unto the said party of the second part, and to his heirs, and assigns forever, " all the right, title, and interest of the State of California," in the following described parcel of land, situated within the city of San Francisco, county of San Francisco, and State of California, known and described as follows, to wit: Commencing on the north line of Sacramento street, 48 feet 4 inches west of
*16 East street; thence west along Sacramento street [*16] 24 feet 4 inches; thence at right angles north 59 feet 9 inches; thence at right angles east 24 feet 4 inches; thence at right angles south 59 feet 9 inches to place of beginning, being lot number 121, of city slip property as per plan on record in the county recorder's office of the county of San Francisco.

(Signed) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHA'S H. HEMPSTEAD, [SEAL.]
Sec'y of State of the State of California.
72 SAM. BELL, [SEAL.]
Controller of State of the State of California.

Acknowledged November 7th 1855, before A. A. Selover, notary public.
Recorded September 9th, 1858, liber 81 of deeds, page 347.

*17 [*17] The governor of the State of California, the secretary of state, and the controller of state of the State of California, a board, &c., to William Smith. Deed dated November 7th, 1855. Cons. $50.00.

Do grant, bargain, sell, and quit-claim unto the said party of the second part, and to his heirs and assigns forever, "all the right, title, and interest of the State of California," in the following described parcel of land situated within the city of San Francisco, county of San Francisco, State of California, known and described as follows, to wit:
Commencing at the point of intersection of the north line of Sac-
*18 ramento street with the westerly [*18] line of East street; thence westerly along Sacramento street 48 feet 4 inches; thence at right angles northerly 59 feet 9 inches to East street; thence
73 southerly along East street 73 feet 6 inches to the place of beginning, being lot number 122, (triangular,) of the city slip property, as per plan of the same on record in the county recorder's office of San Francisco.

(Signed) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHA'S H. HEMPSTEAD, [SEAL.]
Sec'y of State of the State of California.
SAM. BELL, [SEAL.]
Controller of State of the State of California.

Acknowledged November 7, 1855, before A. A. Selover, notary public.
Recorded September 9th, 1858, liber 81 of deeds, page 344.

*21 [*21] Samuel H. Brooks, of the county of San Joaquin, State of California, to Austin E. Smith. Deed dated September 9th, 1858. Consideration $13,000.

Does grant, bargain, sell, remise, convey, and quit-claim unto the said party of the second part, and to his heirs and assigns, forever, all the right, title, and interest of the said party of the first part in and
74 to that certain parcel of land now covered with water and being in the City of San Francisco, and described as follows, (same description as in deed City of San Francisco to George T. Marye and J. Caleb Smith, liber 47 of deeds, page 60, hereinbefore given on page *1 of this abstract,) being subdivision designated as numbers 121 and 122 in Gardiner's map of the city slip property in the office of the re-
*22 corder of the [*22] county of San Francisco, in liber 1 of maps, page 6.

Witness: Sam'l Hermann.
Ack'd September 9th, 1858, before Sam'l Hermann, N. P.
Rec'd September 9th 1858, liber 81 of deeds, page 353.

*23 [*23] Austin E. Smith to Lloyd Tevis. Deed dated June 8th, 1861. Consideration, $50,000.

Doth remise, release, and quit-claim unto the party of the second part, and to his heirs and assigns forever, all my right, title, and interest, being an undivided one-half (½) in and to all that certain parcel of land described as follows:
75 *24 [*24] Also, all that property now covered with water, commencing at a point on the northerly line of Sacramento street, distant eastwardly from the northeast corner of Drumm and Sacramento streets 527 feet; thence northerly and at right angles with Sacramento street 59 feet 9 inches; thence at right angles eastwardly to the westerly line of East street; thence southeasterly along the westerly line of East street

to Market street; thence southwesterly along the northerly line of Market street to its intersection with Sacramento street; thence along the northerly line of Sacramento street to the place of beginning, together with the small wharf east of said property and attached thereto and an appurtenance thereof.

*25 [*25] Ack'd July 1st, 1861, before Blair Laurie, N. P.
Rec'd July 8th, 1861, liber 135 of deeds, page 216.

*27 [*27] The city and county of San Francisco to Lloyd Tevis. Deed dated October 26th, 1865. Consideration, $1.

[50-ct. R. stamp, c'l'd.]

Doth remise, release, and quit-claim unto the party of the
76 second part and to his heirs and assigns forever, all of the real estate in the city and county of San Francisco, and State of California, and known, numbered, and designated as city slip lots Nos. 121, 122. This deed being intended to convey to said Lloyd Tevis, who claims to be the successor in interest of the original grantees hereinafter named, and not otherwise; and as an execution of the trusts indicated by act of the legislature of the State of California, approved April 17th, 1862, entitled "An act to give further powers to the board
*28 of [*28] supervisors of the city and county of San Francisco," all the right, title, and interest of the said city and county of San Francisco in and to the lots of land hereinbefore described which said lots of land were sold to said last named parties at public sale on the 26th day of December, 1853, and for which deeds were made by the said city of San Francisco, as follows: For said lots Nos. 121 and 122 to George T. Marye and J. Caleb Smith, by deed dated January 16th, 1854, and recorded September 13th, 1854, &c., in liber 47 of deeds, at page 60, &c.

It witness whereof the said city and county has executed these presents by causing its corporate seal to be hereunto affixed by Henry P. Coon, mayor of said city and county, and the same to be signed by the said mayor this 31st day of October, 1865.

[SEAL.] (Signed) HENRY P. COON,
Mayor of the City and County of San Francisco.

77 Ack'd November 3d, 1865, before F. J. Thibault, N. P.
Rec'd January 20th, 1866, liber 315 of deeds, page 10.

*29 [*29.] Lloyd Tevis to George T. Marye. Deed dated October 10th, 1863. Consideration, $5.

[50c. R. stamp, c'l'd.]

Doth grant, bargain, and sell, convey, and confirm unto the party of the second part, and to his heirs and assigns forever, all of the real estate in the city and county of San Francisco, &c., and particularly set out and described as follows, to wit: Also, the equal undivided one half part of all that property now covered with water, commencing at a point on the northerly line of Sacramento street, distant eastwardly from the northeast corner of Drumm and Sacramento streets, 527 feet; thence northerly, and at right angles with Sacramento
*30 street, [*30] 59 feet 9 inches; thence, at right angles, eastwardly, to the westerly line of East street; thence southeasterly, along the westerly line of East street, to Market street; thence southwesterly, along the northerly line of Market street, to its intersection with Sacramento street; thence along the northerly line of Sacramento street

78 to the place of beginning; together with the equal undivided one-half part of the small wharf east of said property, and attached thereto, and an appurtenance thereof.

Ack'd January 19th, 1866, before Henry Haight, N. P.
Rec'd March 1st, 1866. Liber 318 of deeds, page 174.

*31 [*31] Lloyd Tevis to Joseph Emeric. Deed dated June 16th, 1866. Consideration, $29,000.

[$29. R. stamps c'ld.]

Doth grant, bargain, and sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the said party of the first part, in and to the lots or parcels of real estate situated in the city and county of San Francisco, which are particularly described as follows:

*32 [*32] Also, the equal undivided one-half part of all that property now covered with water, (same as second description in deed Tevis to Marye, liber 318 of deeds, page 174, hereinbefore given on page *29 of this abstract,) said premises being known and numbered as city-slip lots Nos. 121 and 122, together with the undivided half of small
79 wharf east of said property, attached thereto, and an appurtenance thereof.

Witness: Henry Haight.
Ack'd June 16th, 1866, before Henry Haight, N. P.
Rec'd June 19th, 1866, liber 334 of deeds, page 6.

*33 [*33.] William Smith, Elizabeth H. Smith, Mary Amelia Smith, Thomas Smith, all of Warrenton, in the State of Virginia, to Joseph Emeric, of the city and county of San Francisco. Deed dated December 31st, 1866. Consideration, $5.

[50 c. r. stamp, c'l'd.]

Do hereby grant, bargain, sell, and convey unto the party of the second part, and to his heirs and assigns forever, all the right, title, and interest which they, the said parties of the first part, may have in their own right and as heirs of J. Caleb Smith and Austin E. Smith, or of either of them, in and to all the following-described lots of land, situate in the city and county of San Francisco, in the State of California, al
*34 the equal undivided [*34] one-half part of all that property in said city and county now covered by water, (same as 2d description
80 in deed Tevis to Marye, liber 318 of deeds, page 174, hereinbefore given on page *29 of this abstract,) said premises being known and numbered as city-slip lots Nos. 121 and 122, together with the undivided one-half of the small wharf east of said property, and attached thereto, and an appurtenance thereof.

Ack'd January 7th, 1867, before W'm A. Jennings, clerk of the county court of Fauquier Co., State of Virginia.
Rec'd March 12th, 1867, liber 355 of deeds, page 390.

*35 [*35] Joseph Emeric to George T. Marye. Deed dated April 20th, 1867. Consideration, $6,000.

$6. R. stamps, c'l'd.

Does grant, bargain, and sell, convey, and confirm unto the party of the second part, and to his heirs and assigns forever, all the undivided

one-half part of all that certain parcel of land situated in said city and county of San Francisco, described as follows, (same as 2d description in deed Tevis to Marye, liber 318 of deeds, page 174, hereinbefore given on page *29 of this abstract,) being city-slip lots numbers 121 and 122, together with the undivided one-half of a small wharf east of
81 said property, attached thereto, and an appurtenance thereof. Witness: Sam'l Hermann.

*36 [*36.] Ack'd April 25th, 1867, before Sam'l Hermann, N. P. Rec'd April 25th, 1867, liber 369 of deeds, page 108.

*37 [*37.] George T. Marye and Joseph Frank to Adolph C. Weber. Deed dated September 30th, 1867. Consideration, $50,000.

$50 R. stamps, c'l'd.

Do hereby grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain parcel of land and land and water situate in the city and county of San Francisco, State of California, bounded and described as follows, to wit: Commencing at a point on the northerly line of Sacramento street, in said city and county, marked "A" in a diagram hereto annexed; thence running easterly, along said line, 55 feet 11 inches, to a point marked "B" in said diagram; thence easterly, to a point
*38 marked "C" on said diagram; thence at right [*38] angles northerly to a point marked "D" on said diagram; thence easterly at right angles, to a point marked "E" on said diagram; thence
82 northerly to a point marked "F" on said diagram; thence westerly to a point marked "G" on said diagram; thence northerly to a point marked "H" on said diagram; thence westerly to a point marked "I" on said diagram; thence southerly to a point marked "J" on said diagram; thence along Commercial street to a point marked "K" on said diagram; thence at right angles to a point marked "K" on said diagram; thence at right angles to a point marked "L" on said diagram; thence at right angles to a point marked "M" on said diagram; and thence at right angles to point "A," and place of beginning.

Parties of the first part hereby sell, transfer, and assign, grant, convey, and make over unto the said party of the second part, his heirs, representatives, and assigns forever, all causes of action and claims for damages which they or either of them have, or which has accrued to them, or either of them, by reason of the unlawful occupation or detention of said premises, or any portion thereof, by any person or persons whomsoever, or by reason of obstructions having been placed in front of said premises, so as to prevent the approach and access of
*39 vessels and water-crafts thereto, and [*39] so as to prevent the use of the same and portions thereof as a wharf.

Ack'd September 30th, 1867, before John White, N. P.
Rec'd March 17th, 1869, liber 487 of deeds, page 271.

(Here follows diagram marked page 82.)

83 *41 [*41] The governor of the State of California, the secretary of state, and the controller of state, &c., to James Grant and David C. McCarthy. Deed dated November 7th, 1855. Consideration, $50.

Do grant, bargain, sell, and quit-claim unto said party of the second part and to their heirs and assigns forever "all the right, title, and interest

of the State of California in the following described parcel of land, lying and being within the city of San Francisco, &c., known and described as follows, to wit: Commencing at the point of intersection of the southern line of Central wharf with the western line of East street;
*42 thence southerly at right angles to Central wharf 59 feet [*42] 9 inches; thence at right angles easterly 48 feet 4 inches to East street; thence northerly along East street 73 feet 6 inches to the place of beginning, being the triangular lot, No. 119, of the city-slip property, as per plan of the same on record in the county recorder's office of the county of San Francisco.

(Signed) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHARLES H. HEMPSTEAD, [SEAL.]
Sec'y of State of the State of California.
SAM. BELL, [SEAL.]
84 *Controller of State of the State of California.*

Ack'd November 7th, 1855, before A. A. Selover, N. P.
Rec'd November 14th, 1855, liber 57 of deeds, page 54.

*43 [*43] The governor of the State of California, the secretary of state, and the controller of state, &c., to James Grant and David C. McCarthy. Deed dated November 7th, 1855. Consideration, $50.

Do grant, bargain, sell, and quit-claim unto the said party of the second part and to their heirs and assigns forever, all the right, title, and interest of State of California in the following described parcel of land, situated within the city of San Francisco, &c., known and described as follows, to wit: Commencing at the point of intersection of the southerly line of Central wharf with the westerly line of East street; thence westerly along Central wharf 21 feet 8 inches; thence at right angles southerly 59 feet 9 inches; thence at right angles
*44 easterly 21 feet 8 inches; thence at right angles northerly [*44] 59 feet 9 inches to the place of beginning, being lot No. 118, of "city-slip" property, as per plan of the same on record in the
85 county recorder's office of the county of San Francisco.

(Signed) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHARLES H. HEMPSTEAD, [SEAL.]
Sec'y of State of the State of California.
SAM. BELL, [SEAL.]
Controller of State of the State of California.

Ack'd November 7th, 1855, before A. A. Selover, N. P.
Rec'd November 14th, 1855, liber 57 of deeds, page 58.

*45 [*45] The governor of the State of California, the secretary of state, and the controller of state of California, a board, &c., to George H. Faulkner. Deed dated November 7th, 1855. Consideration, $50.

Do grant, bargain, sell, and quit-claim unto the party of the second part and to his heirs and assigns forever, "all the right, title, and interest of the State of California in the following described parcel of land, situated within the city of San Francisco, known and described as follows, to wit: Commencing on the south line of Central wharf 21

feet 8 inches west of East street; thence westerly along Central
86 wharf 24 feet 4 inches; thence at right angles southerly 59 feet
9 inches; thence at right angles easterly 24 feet 4 inches; thence
at right angles northerly 59 feet 9 inches, to the place of begin-
*46 ning, being [*46] city-slip" lot, No. 115, as per plan of the same
on record in the county recorder's , county of San Fran-
cisco.

(Signed) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHARLES H. HEMPSTEAD, [SEAL.]
Sec'y of State of the State of California.
SAM. BELL, [SEAL.]
Controller of State of the State of California.

Ack'd November 7th, 1855, before A. A. Sclover, N. P.
Rec'd February 16th, 1856, liber 59 of deeds, page 422.

*47 [*47] George H. Faulkner to Simon L. Jones. Deed dated February 18th, 1856. Consideration, $2,000.

Does grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever, all and singular, the following described parcels of land, situated in the city of San Fran-
87 cisco, and State of California, and bounded and described as
*48 follows, to wit: [*48] Also commencing on the north line of Sacramento street 142 feet 8 inches west from East street; thence west along Sacramento street 24 feet; thence at right angles northerly 59 feet 9 inches; thence at right angles easterly 24 feet; thence at right angles southerly 59 feet 9 inches, to the place of beginning, being lots numbered 113 of the city-slip property, as per plan above described. Also commencing on the south line of Central wharf 46 feet west of East street; thence west along Central wharf 24 feet; thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 24 feet; thence at right angles northerly 59 feet 9 inches, to the place of beginning, being city-slip lot No. 114, as per plan above described. Also commencing on the south line of Central wharf 21 feet 8 inches west of *east of* East street; thence
*49 westerly along Central wharf 24 feet 4 inches; [*49] thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 24 feet 4 inches; thence at right angles northerly 59 feet 9 inches, to the place of beginning, being city-slip lot No. 115, as per plan above described. (And other property.)

Ack'd February 18th, 1856, before H. A. Cobb, N. P.
Rec'd February 19th, 1856, liber 60 of deeds, page 27.

*51 [*51] Simon L. Jones to John Mugan. Deed, dated June 8th,
88 1858. Consideration, $1,000.

Does remise, release, and quit-claim unto the party of the second part and to his heirs *heirs* and assigns forever, all his right, title, and interest in and to all those certain "water lots," or pieces of land, which were formerly or are now covered with water and familiarly known as "city-slip lots," and particularly designated on a map or plan thereof, made by James J. Gardiner, surveyor, in the month of December, A. D. 1853, as lots numbers 113, 114, and 115, said map or plan being on record in the office of the city and county recorder of the city and

county of San Francisco, in map-book No. 1, on page 6, and is
*52 hereby specially [*52] referred to and made part thereof.
Ack'd June eight, 1858, before H. A. Cobb, N. P.
Rec'd June 19th, 1858, liber 78 of deeds, page 179.

*53 [*53] John Mugan to P. C. Hyman. Deed dated June 19th, 1858. Consideration, $525.

89 Doth remise, release, and quit-claim unto the party of the second part, and to his heirs and assigns, forever, all his right, title, and interest in and to those certain water-lots, (in number seven,) situated in said city of San Francisco, and generally known as "city-slip lots," Nos. 113, 114, & 115, as numbered and laid down on a map or plan of said lots, surveyed and made by James J. Gardiner, county surveyor, in December, A. D. 1853, which map or plan is recorded in the office of the county recorder, &c., in map-book No. 1, page 6.

(Signed) JOHN MUGAN, [SEAL.]
By his att'y-in-fact, R. H. LINTON. [SEAL.]

*54 [*54] Ack'd June 19th, 1858, before H. A. Cobb, N. P.
Rec'd June 19th, 1858, liber 78 of deeds, page 215.

*55 *The city and county of San Francisco to James Grant and D. C. M. McCarthy. Deed dated March 22d, 1859. Consideration, $19,000, &c.:

Doth bargain, sell, and convey unto the parties of the second part, their heirs and assigns, forever, all the right, title, interest, estate, claim, and demand, both at law and in equity, as well in posses-
90 sion as in expectancy, of the said city and county of San Francisco, of, in, and to all that certain parcel of land situate in the city and county of San Francisco, and bounded and described as follows: 73 feet 6 inches front on East street, 48 feet 4 inches on the south, and 59 feet 9 inches on the west, being triangular lot number 119, as per plan of the aforesaid property on record in the county recorder's
*56 office of the [*56] city and county of San Francisco.

This conveyance is made without any covenant or warranty, express or implied, on the part of said party of the first part.

In witness whereof the said party of the first part hath hereunto caused the corporate seal to be affixed and these presents to be subscribed by the treasurer of the city and county of San Francisco.

[SEAL.] WM H. TILLINGHAST,
Treasurer of the City and County of San Francisco.

Ack'd March 22d, 1859, before C. J. Brenham, N. P.
Rec'd March 22d, 1859, liber 91 of deeds, page 168.

*57 *Presley C. Hyman to Jacob S. Cohen. Deed dated July
91 18th, 1850. Consideration, $750:

Doth remise, release, and quit-claim unto the party of the second part, and to his heirs and assigns, forever, all his right, title, and interest in and to the following parcels of land situate in the city of San Francisco, & described as follows:

113, 114, and 115, as described in deed Faulkner to Jones, liber
*58 60 of deeds, page 27, hereinbefore given [*58] on page 47 of this abstract.

(Also, remises, &c., city-slip lots 63 and 64, 65 and 66.)
Ack'd July 25th, 1860, before E. P. Peckham, N. P,
Rec'd January 10th, 1861, liber 122 of deeds, page 100.

*59 *The city and county of San Francisco, by H. P. Coon, mayor, to Mary E. Grant, executrix of the last will and testament of James Grant, deceased. Deed dated May 14th, 1864.

[$10 R stamp, c'l'd,]

Consideration, $9,500, heretofore paid to said city and county, in cash and scrip of the former city of San Francisco, &c., in pursuance of an act entitled "An act to authorize the treasurer of the city and
92 county of San Francisco to execute certain deeds and cancel certain claims," approved April 26th, 1858, &c.:

Doth remise, release, and quit-claim unto the party of the second part, and to her heirs and assigns, forever, one undivided half of all that parcel of land situate in the city of San Francisco, and de-
*60 scribed as follows, viz: Commening at the [*60] southwest corner of Central wharf, or Commercial and East streets; thence running along the line of East street southeasterly 73 feet 6 inches; thence westerly and parallel with Sacramento street 48 feet 4 inches; thence at right angles northerly and parallel with Drum street 59 feet 9 inches to Central wharf or Commercial street, being a triangular lot known and numbered 119 on the map of property known as city-slip property, and recorded in the office of the county recorder of the city and county of San Francisco, in liber 1 of maps, page 6. This conveyance is made by virtue of an act of the legislature of the State of California, entitled an act to give further powers to the board of supervisors of the city and county of San Francisco, approved April 17th, 1862, and by virtue of an ordinance of the people of the city and county of San Francisco, passed by the board of supervisors of said city and county, February 8th, 1864, and approved by the mayor of said city & county, February 9th, 1864, which said ordinance is numbered order 569: To have and to hold, &c., unto second party, her heirs and assigns, forever, without warranty or recourse against first party for any cause whatsoever,
93 in trust for the estate of Samuel Grant, deceased, in the due and lawful administration and distribution thereof.

Witness: Otis V. Sawyer.
Ack'd May 27th, 1864, before Otis V. Sawyer, N. P.
Rec'd May 30th, 1864, liber 245 of deeds, page 204.

*61 *The city and county of San Francisco, by H. P. Coon, mayor, to D. C. McCarthy. Deed dated May 25th, 1864.

[$10 R. stamp, c'l'd.]

Consideration, $9,500, heretofore paid to said city and county, in cash and scrip of the former city of San Francisco, &c.:

Doth remise, release, and quit-claim unto the party of the second part, and to his heirs and assigns, forever, one undivided half of all that parcel of land situate in the city of San Francisco, and described as follows: (Same description as in deed, the City and County of San Francisco to Mary E. Grant, liber 245 of deeds, page 204, hereinbefore given on page *59 of this abstract,) being a triangular lot known and numbered 119 in the map of property known as the city-slip property, &c.: To have and to hold, &c., without warranty or recourse
*62 [*62] against first party for any cause whatever.

Witness: Otis V. Sawyer.
94 Ack'd May 27th, 1864, before Otis V. Sawyer, N. P.
Rec'd May 30th, 1864, liber 284 of deeds, page 177.
*63 *The city and county of San Francisco to David C. McCarthy. Deed dated August 11th, 1866. Consideration, $2,225, gold coin of the United States.

[$2.50 R. stamp, c'l'd.]

Doth grant, bargain, and sell, convey, and confirm unto the party of the second part, and to his heirs and assigns, forever, all those certain parcels of land situate in the city and county of San Francisco, and bounded as follows, to wit: (Same description as in deed, David C. McCarty to Theodore Le Roy, liber 338 of deeds, page 377, hereinafter given on page *65 of this abstract,) being city-slip lots 115 and 116.

The covenants herein contained or implied by law from the contents hereof are not to be taken as covenants against the existence of liens or encumbrances, but only as covenants against any loss or dam-
*64 age to the purchaser, his heirs or assigns, by reason of the [*64] existence and assertion of such liens and encumbrances; and this conveyance being the act of said city and county of San
95 Francisco, all claims in the premises, or that may hereafter arise under or by reason of the execution of this deed, shall be exclusively against the said city and county of San Francisco, and in no event against the agents of said city and county by whom these presents are executed.

[SEAL.] (Signed) HENRY P. COON,
Mayor of the City and County of San Francisco.

Witness: Sam'l Hermann.
Ack'd, August 11th 1866, before Sam'l Hermann, N. P.
Rec'd, September 22d, 1866, liber 338 of deeds, page 335.

*65 David C. McCarthy to Theodore Le Roy. Deed dated September 29th, 1866. Consideration $6,000.

[$6. R. stamps c'l'd.]

Does grant, bargain, and sell, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to those certain parcels of land situated in the city and county of San Francisco, and bounded and described as follows: First. Commencing at a point on the southerly line of Com-
96 mercial street, distant 457 feet and 4 inches easterly from the southeasterly corner of Drumm and Commercial streets; running thence easterly along said southerly line of Commercial street 24 feet and 4 inches; thence at right angles southerly 59 feet and 9 inches; thence at right angles westerly and parallel with Commercial street 24 feet and 4 inches; and thence at right angles northerly 59 feet and 9
[*66 inches [*66] to the southerly line of Commercial street and the point of commencement; being lot known and numbered as 115 on the map of property known as city-slip property, said map being the one made by J. J. Gardiner, city and county surveyor, in the month of December, 1863, and recorded, &c., in liber 1 of maps, page 6.

Second. Commencing at a point on the northerly line of Sacramento street, distant 456 feet and 8 inches easterly from the northeasterly corner of Drumm and Sacramento streets; running thence easterly along said northerly line of Sacramento street 24 feet; thence at right angles northerly 59 feet and 9 inches; thence at right angles westerly

and parallel with Sacramento street 24 feet; and thence at right angles southerly 59 feet and 9 inches to said northerly line of Sacramento street and the point of commencement, being lot known and numbered as 116 on said official map as aforesaid.

Witness: Samuel Hermann.

Ack'd, September 29th, 1866, before Sam'l Hermann, N. P.

97 Recorded September 29th, 1866, liber 338 of deeds, page 377.

*67 The city and county of San Francisco to David C. McCarthy. Deed dated August 11th, 1866. Consideration $875, gold coin of the United States.

[$1. R. stamp c'l'd.]

Doth grant, bargain, and sell, convey and confirm, unto the party of the second part, and to his heirs and assigns forever, all that certain parcel of land situate in the city and county of San Francisco, and bounded and described as follows, to wit: Commencing at a point on the southerly line of Commercial street, distant 481 feet 8 inches easterly from the southeasterly corner of Drumm and Commercial streets; running thence easterly along said southerly line of Commercial street 21 feet and 8 inches; thence at right angles southerly 59 feet and 9 inches; thence at right angles westerly and parallel with Commercial

*68 street 21 feet and [*68] 8 inches; and thence at right angles northerly 59 feet and 9 inches to the southerly line of Commercial street and the point of commencement, being the lot known and numbered 118 on the map of property known as city-slip property, &c.

(Signed) HENRY P. COON,

98 *Mayor of the City and County of San Francisco.*

Ack'd, August 11th, 1866, before Sam'l Hermann, N. P.
Rec'd September 22d, 1866, liber 340 of deeds, page 187.

*69 *Jacob S. Cohen to D. C. McCarthy. Deed dated September 27th, 1866. Consideration, $300.

[50c. R. stamp c'l'd]

Does grant, bargain, and sell, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to the following parcel of land, situated in the city and county of San Francisco, and known, laid down, and described on the official map of the city and county of San Francisco, as city-slip lot, number 115, which lot has a frontage of 24 feet and 4 inches on Commercial street, by a uniform depth of 59 feet and 9 inches.

Ack'd, September 29th, 1866, before John White, N. P.
Rec'd September 29th, 1866, liber 340 of deeds, page 218.

99 *71 *David C. McCarthy to Mary E. Burckes. Deed dated October 9th, 1866. Consideration, $500.

[50c. R. stamp, c'l'd.]

Doth grant, bargain, and sell, unto the said party of the second part, and to her heirs and assigns forever, all his right, title, and interest in and to one undivided one-half inter'st in and to city-slip lot, number 118.

Witness: T. A. Lynch.
Ack'd, October 9th, 1866, before T. A. Lynch, N. P.
Rec'd October 9th, 1866, liber 342 of deeds, page 187.

*73 *David C. McCarthy, Samuel S. Burckes and his wife, Mary E. Burckes, (widow of the late James Grant,) to Joseph Frank. Deed dated June 10th, 1867. Consideration, $25,000.

[$25. R. stamp, c'l'd.]

Do grant, bargain, and sell, convey and confirm, unto the party
100 of the second part, and to his heirs and assigns forever, all that certain parcel of land situate in the city and county of San Francisco, known, &c., particularly described as follows: Commencing at a point on the south line of Commercial street, (formerly Central wharf,) distant 481 feet & 4 inches easterly from the southeasterly corner of Drumm and Commercial streets; and running thence easterly along said southerly line of Commercial street, 38 feet and 4 inches to the southwesterly corner of Commercial and East streets; thence southeasterly along the westerly line of East street, 73 feet and 7½ inches; thence wes-
*74 terly [*74] and parallel with Sacramento street 81 feet 4¼ inches; thence at right angles northerly and parallel with Drumm street 59 feet and 9 inches to the southerly line of Commercial street at the point of commencement; same being known and designated on the map of the city and county of San Francisco as city-slip lots, Nos. 118 & 119, together with a certain wharf and the superstructures thereon, situate in front & and along the front of the above & foregoing property on East street, and all the privileges & franchises therewith connected, and rents, profits, & advantages arising therefrom. Also all the surplus property lying in said city-slip lots, Nos. 118 and 119, and between said lots Nos. 118 and 119.

Witness: F. J. Thibault.

Ack'd, June 10th, 1867, before F. J. Thibault, N. P.

101 Rec'd June 11th, 1867, liber 376 of deeds, page 167.

(Here follows 2 maps marked page 101.)

Stipulation.

United States circuit court, 9th circuit, State of California.

ADOLPH C. WEBER
v.
THE BOARD OF STATE HARBOR COMMISSIONERS.

Stipulated that the foregoing abstract of the record of conveyances be attached to, and inserted as part of the transcript on appeal in the above entitled cause, and that the same are the various conveyances given in evidence on the trial of the cause, and referred to in the minutes of evidence taken down by the presiding judge.

W'M H. PATTERSON,
Sol'r for Complainant.
THOMAS P. RYAN,
Solicitor for Def'ts.

(Endorsed:) Abstract of various deeds relating to certain city-slip lots. Filed 27 January, 1871. L. S. B. Sawyer, clerk.

102 *Last will, &c., &c., of James Grant.*

Know all men by these presents that I, James Grant, of the city and county of San Francisco, State of California, of sound mind, knowing

that life is uncertain, and being desirous of placing my wor'dly affairs in proper condition declare this to be my last will and testament.

First. In case of my death I bequeath all my property, real, personal, and mixed, and of all kinds and nature whatever, to my beloved and affectionate wife, Mary Elizabeth Grant, to her sole use and benefit, less the sum that may be required for my funeral expenses, and the payment of any indebtedness for which my estate shall be holden.

Second. I hereby appoint my said wife sole executrix of my said estate, and having full confidence in her integrity expressly desire that she shall be allowed to act as such executrix, and administer in the premises without any bonds or security whatsoever; requesting by this, that she, my said wife, will, within one year after my decease, send my sister, Ann M. Grant, now living and residing with Miss. Leslie Berrybank, Scotland, and near Aberdeen, kingdom of Great Britain, the sum of five hundred dollars; meaning hereby that my wife and sole executrix, by virtue of this my last will and testament, inherit and have after my decease, all of my estate, less the amount necessary to fulfil the conditions hereinbefore stated.

In witness whereof, I have hereunto set my hand and seal to this my last will and testament, this fifth day of February, A. D., one
103 thousand eight hundred and sixty-four.

(Signed) JAMES GRANT. [SEAL.]

We, E. L. Brittingham and Thomas B. Thompkins, at the special request of James Grant, have, this fifth day of Feb'uary, A. D. 1864, at the city and county of San Francisco, witnessed his signing and sealing the above instrument.

Witness our hands and seals the day and year aforesaid.

(Signed) THOMAS B. THOMPKINS. [SEAL.]
E. L. BRITTINGHAM. [SEAL.]

(Endorsed:) Filed in the probate court of the city and county of San Francisco, State of California, this fifth day of March, A. D. 1864. W'm Loewy, clerk, by A. J. Jeghers, dep' clerk.

104 *Bond on appeal.*

In the circuit court of the United States in and for the ninth circuit, State of California.

Know all men by these presents that we, William H. Patteson, attorney at law, and A. P. Hotaling, merchant, of San Francisco, are held and firmly bound unto the Board of State Harbor Commissioners, obligee, in the sum of one thousand ($1,000.00) dollars, to be paid to the said obligee, its successors or assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the seventh (7th) day of November, A. D. 1871.

Whereas Adoph C. Weber is about to prosecute an appeal to the Supreme Court of the United States to reverse the judgment and decree entered on the third day of January, A. D. 1871, in a certain suit in equity, wherein said Weber is complainant, and said Board of State Harbor Commissioners is defendant, in the said circuit court:

Now, therefore, the condition of this obligation is such, that if the above-named Adolph C. Weber shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea,

then this obligation shall be void; otherwise to remain in full force and virtue.

W'M H. PATTERSON. [SEAL.]
A. P. HOTALING. [SEAL.]

Sealed and delivered in presence of—
L. S. B. SAWYER.

105 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William H. Patterson and H. P. Hotaling, being each duly sworn, says he is an obligor named in the foregoing bond; that he is a freeholder in said State, and is worth the sum of one thousand dollars over and above all his debts and liabilities.

W'M H. PATTERSON.
A. P. HOTALING.

Sworn to before me Nov. 7th, 1871.

L. S. B. SAWYER,
U. S. Com'r.

(Endorsed:) The within bond is approved as to form and sufficiency of the sureties.

LORENZO SAWYER,
U. S. Circuit Judge.

Filed 7th November, 1871. L. S. B. Sawyer, clerk.

106 *Order allowing appeal.*

At a stated term of the circuit court of the United States of America, ninth circuit for the district of California, held at the court-room, in the city of San Francisco, on Wednesday, November 8, A. D. 1871—
Present, the Honorable Lorenzo Sawyer, circuit judge.

ADOLPH C. WEBER, COMPLAINANT,
v.
THE BOARD OF STATE HARBOR COMMISSIONERS. } In equity.

At this day, on motion of William H. Patterson, solicitor for the said complainant, it is ordered that an appeal from the decision and decree in the above-entitled cause, made and entered on the third day of January, A. D. 1871, of the October term, A. D. 1870, to the Supreme Court of the United States, be, and the same is hereby, allowed, and that a certified transcript of the pleadings, depositions, evidence, stipulations, and proceedings, be forthwith transmitted to the Supreme Court of the United States.

107 *Stipulation as to certain maps.*

In the circuit court of the United States in and for the district of California.

ADOLPH C. WEBER
v.
THE HARBOR COMMISSIONERS OF THE STATE of California.

It is hereby stipulated and agreed that the diagram and map annexed to the abstract of deeds on file herein, and marked respectively "Copy

of portion of Gardiner's map," and "Copy of the official map of the city of San Francisco, compiled by W. T. Eddy, city surveyor, January 15, 1851," be, and the same are hereby, made and constituted part and parcel of said abstract of deeds on file.

(S'g'd) W. H. PATTERSON,
Att'y for Pl'ff.

(S'g'd) THOMAS P. RYAN,
Solicitor for Def'ts.

SAN FRANCISCO, CALIFORNIA, *Nov. 13th*, 1871.

(Endorsed:) Filed Nov. 14, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, D. C.

108 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth circuit, district of California, do hereby certify that the foregoing one hundred and seven written pages, numbered from 1 to 107, inclusive, are a correct transcript on appeal from the said circuit court to the Supreme Court of the United States of America, in the cause therein entitled.

Attest my hand and the seal of said circuit court, this 18th day of November, A. D. 1871.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

109 By the Honorable Lorenzo Sawyer, judge of the circuit court of the United States in and for the ninth circuit, district of California, to the Board of State Harbor Commissioners:

Whereas Adolph C. Weber has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the district of California, made in favor of you, the said Board of State Harbor Commissioners, and has filed the security required by law: You are therefore hereby cited and admonished to be and appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city and county of San Francisco, in the district of California, in the ninth circuit, the eighth day of No-
110 vember, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] LORENZO SAWYER,
Judge of the Circuit Court of the United States, in and for Ninth Circuit, District of California.

111 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

John P. Bell, being duly sworn, deposes and says, that he is a white male citizen of the United States of America, and over the age of twenty-two years; that, on the eighth day of November, A. D. 1871, at the city and county of San Francisco, he personally served on Thomas P. Ryan, solicitor for the above-named appellee, a copy of the foregoing citation, by delivering said copy of the citation to said Thomas P. Ryan, solicitor, personally, and leaving the same with him.

JOHN P. BELL.

Sworn to this 18 day of November, A. D. 1871.

JOS. F. O'BEIRNE,
U. S. Commissioner, Dist. of Cal'a.

112 I hereby acknowledge due, legal, and personal service on me of the within citation, at the city and county of San Francisco, this 8th day of November, A. D. 1871.

THOMAS P. RYAN,
Solicitor for Harbor Commissioners.

(Indorsed:) U. S. circuit court, ninth circuit. Adolph C. Weber v. The Board of State Harbor Commissioners. Citation. Filed Nov. 18, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, D. C..

(Indorsement on cover:) No. 546. Adolph C. Weber, appellant, vs. The Board of State Harbor Commissioners. California C. C. U. S. Filed 16th December, 1871.

No. .....

IN THE

Supreme Court

OF THE

UNITED STATES.

WEBER,

vs.

THE HARBOR COMMISSIONERS

(of the State of California.)

Brief and Argument of Appellants.

WM. IRVINE,
Solicitor for Appellant.
S. HEYDENFELDT,
Of Counsel.

C. A. Murdock & Co., Printers, 532 Clay Street, San Francisco.

IN THE

SUPREME COURT

OF THE

United States.

WEBER,

vs.

THE HARBOR COMMISSIONERS

(of the State of California.)

Brief and Argument of Appellants.

The Act of the California Legislature of March 26th, 1851, commonly called the Water Lot Bill (Laws of 1851, p. 307, ch. 40), granted to the City of San Francisco, an estate for ninety-nine years, in the tide lands around the city, and described said lands by a fixed arbitrary line, which it enacted "shall be and remain a permanent water-front of said city." Sec. 47.

In the year 1853, the complainant's predecessor

in title acquired the term so granted to the city (and soon after the reversionary interest of the State), in a parcel of tide land lying immediately on said water front (as established by said Act of 1851), and extending between Sacramento and Commercial streets, being about one hundred and twenty feet of said water-front.

In 1853 or 1854, the owner of the said lots built the wharf which has given rise to this cause, and they and their successors in interest have maintained it, kept possession, and received and collected the tolls and wharfage for fourteen years uninterruptedly, next before the wrongs complained of in the bill.

The diagram accompanying the record, and copied into this brief, shows the lots owned by the complainant and the wharf. The latter was constructed by first building a platform feet wide, along and adjoining the water-front, the whole length of the lots, and then extending a construction from that platform into the water of the bay—making it about feet in width, and leaving a space or slip on each side for the approach and dockage of vessels.

By the Act of April 24, 1863, (page 406) and the amendatory Act of March 5th, 1864, the Legislature created the defendants the Board of Harbor Commissioners (see Acts 1863–64, page 158, chapter 149.) The defendants were authorised to take possession of the waters of the bay, for a space of six hundred feet

from the water-front, and "adjacent thereto." This Act also required the Commissioners "to investigate and ascertain by what authority any portion of said water-front is possessed and held by persons or parties adversely to the State."

"To institute such legal proceedings as may be necessary to discover the nature of such authority." And "to institute actions at law or in equity for the possession of any wharf or wharves," etc.

On the day of , 1867, the defendants caused the erection, by piling, capping and planking on both sides of complainant's wharf, so as to prevent any approach to it by vessels, as is narrated in the bill of complaint, and it is to remove these obstructions to the enjoyment of his rights, that the complainant brings his suit.

There was an attempt to make out that a public street, called East street, had been established in front of the complainant's lots, separating him from the water-front, but this was not a new attempt, and had been definitely settled the other way by the Supreme Court of California, in *People ex rel. Jacobs* v. *Kruzer*, (19 Cal. 411,) *People ex rel. Burr* v. *Dana*, (22 Cal. 11.)

No East street was attempted to be established until the Act of March 22d, 1866 (Ch. 321), and no provision was even then made for compensation.

The Statute of Limitations of the State of California, bars the State in ten years. Hittell's Digest. Secs. 43–45.

The facts as above stated, gave rise to the following legal propositions:

1. The ownership of the land on the water-front, conferred the right on the owner to wharf out into the bay, so long as he does not obstruct navigation, and he cannot be cut off from the water.

2. The complainants have acquired a perfect title to the wharf by lapse of time, and the Statute of Limitations of the State of California.

3. The establishment of a *permanent* water-front of the City of San Francisco by the Act of March 26th, 1851, was a contract between the public and the property owners, and could not be changed, except by the assertion of the right of eminent dominion, followed by legal condemnation and compensation.

4. The Act of March 5th, 1864 (Ch. 149), creating the Board of Harbor Commissioners, gave that corporation no right to invade or obstruct the complainant's property, but only to investigate and ascertain the authority under which complainant claimed, and to institute actions to recover the possession.

It seems to us to be too late a day in the history of the law, to be required seriously to argue the foregoing propositions, or either of them. It is doubtless a duty to refresh the memory of the Court with the authority which abundantly sustain these principles, and in confining our labors

to that limit, we think we will render the consideration of the questions proposed easier for both Court and counsel.

I.

On the point that the riparian owner has the right to wharf out, and cannot be cut off from the water.

Angel on Tide-waters. (Ch. 6, p. 171):

"Riparian proprietors, it appears to be well settled, cannot be cut off from the water against their consent, by any extraneous addition to their upland."

Chapman v. *Kimball*, (9 Conn., 41):

"The usage of the owners of land to high-water mark, to wharf out against their own land has never been disputed. The interests of navigation have been subserved, and the consequences have been altogether salutary. On the death of the owner to high-water mark, his estate in the shore and the erections upon it, has descended to his heirs. This is our common law, founded on immemorial usage."

East Haven v. *Hemingway*, (7 Conn., 202.) The opinion says: "It was laid down as the law of this State by Judge Swift, more than thirty years since, in the first volume of his system, that all adjoining proprietors on navigable rivers, have a right to the soil covered with water, as far as they can occupy it—*i.e.*, to the channel—with the exclusive privilege of wharfing, and erecting

piers in front of their land, but with this qualification: that they do not impede the navigation of the water."

1 Swift's Dig., 109.

Nichols v. *Lewis*, (15 Conn, 137):

Where it appeared that B had filled up a portion of the mud-flats between the foot of the bank and the channel of the harbor, claiming a right to do so as riparian proprietor, it was held that he was not precluded from recovering that portion of the flat thus filled up, on the ground that the freehold was not in A, but in the State.

Bowman, dev., v. *Wathen*, (2 McLean, 382):

"On navigable streams, the riparian right, we suppose, cannot extend generally beyond high-water mark. For certain purposes, *such as the erection of wharves* and other structures, for the convenience of commerce, and which do not obstruct the navigation of the river, it may be exercised beyond this limit."

If the foregoing authorities fail to establish the legal right to wharf out in the case at bar, they certainly suffice to establish the conclusion that the possession here taken was under claim of title in good faith, and intended to be adverse to all the world, especially when taken in connection with the acts of the parties.

II.

Title by the Statute of Limitations.

The Statute of Limitations of California provides: "The people of this State will not sue any person for or in respect of any real property on the issues or profits thereof, by reason of the right or title of the people to the same,—

First—Unless such right or title shall have accrued within ten years before any action or other proceeding for the same shall be commenced, or unless—

Second—"The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years."

2 Hittell's Digest, Secs. 43—45, p. 3.

The shore below high-water mark may become private property by prescription.

2 Kent, Lecture 52, p. 427, 3d ed.

Leffingwell v. *Warren*, (2 Blacks. R., 599):

"The lapse of time limited by such statutes not only bars the remedy, but it extinguishes the right, and vests a perfect title in the adverse holder. "It tolls the entry of the person having the right and consequently, though the very right be in the defendant, yet, he cannot justify his ejecting the plaintiff."

And see the case there cited, at p. 605.

Arrington v. *Liscom*, (34 Cal., 366):

"A party under the Statute of Limitations may acquire an absolute right of possession in lands as against all the world, such a right as when ousted will restore him to, and effectually protect him in, his just possession thereof, even against one having the written title. An adverse possession, therefore, confers a substantial title, and it is such a title as entitles the holder to all the remedies that are incident to possession under a written title.

Grattan v. *Wiggins*, (23 Cal., 36):

"Lapse of time not only applies as a defense to an action, but it forms the basis of a new title acquired by prescription, which is founded upon the statute."

People v. *Davidson*, (30 Cal. 379):

Held: that if a person without authority should build a wharf or any other structure outside of the water-front, on soil belonging to the State, that the State can bring ejectment.

Nichols v. *Lewis*, (15 Conn., 136):

Held: that ejectment will lie for a wharf, against the objection that it is a mere franchise.

And see the authorities there cited.

And the title to a franchise is equally acquired and secured by lapse of time and the Statute of Limitations.

Bowman's dev. v. *Wathen*, (2 McLean, 376):

Held: that a ferry right was acquired by lapse of time.

Winnipiseoga Lake Co. v. *Young*, (40 N. H., 43):

"An adverse and uninterrupted enjoyment for twenty years, of an incorporeal hereditament, affords a conclusive prescription of a grant."

Colton v. *Smith*, (1 Cowper, 47):

Prescription, as lord of the manor for toll of all goods landed within the manor, in consideration of repairing a wharf within the manor, not confining it to the wharf, is good.

Wiswall v. *Hall*, (3 Paige's Ch. R., 313–318):

"The right to erect a wharf, and to receive tolls for the use of the same, is a franchise, and cannot be exercised by an individual, except by a grant for that purpose from the sovereign power, or *by prescription* which is supposed to have been founded on a grant, the evidence of which has been lost by the lapse of time." P. 318.

Angel on Limitations, 4th ed., p. 4, Note 7 of Sec. 4:

"By the modern rules established in analogy to the limitation of the right of entry upon land by the Statute of Limitations of 21 James I, a right to an incorporeal hereditament may be acquired by an adverse uninterrupted enjoyment

for twenty years, and the modern reports in England and the United States, abound with decisions to this effect."

The time fixed to bar an action or acquire title by a Statute of Limitations, takes the place of the time of prescription at common law.

Authorities are deemed unnecessary to sustain this proposition.

III.

The establishment of the permanent water-front of San Francisco, by the Act of March 26th, 1851, was a contract between the public and the owners of the property, or those who should afterwards purchase under the grant to the city, and could not be changed, except by the assertion of the rights of eminent domain, and obstructions could not be authorized without compensation.

1st. It is unnecessary to argue that in a sea-port, an acquisition of land on the edge of the shore, has a great and peculiar value.

The proposition is as self-evident as that a lot fronting on a street is of more value than one having no outlet. The access to the water where the commerce of the port is concentrated, is of the highest consideration, and enters into the right of property and its enjoyment, as fully as any other imaginable quality. An enhanced price is always paid for property so situated.

The same principles which are applied to lots sold bounding our streets, apply to strips of land bordering upon our navigable streams, in front of towns or cities.

New Orleans v. *The United States*. (10 Pet. R., 662, at p. 729) the opinion says:

"There can be no difference in principle between ground dedicated as a quay to public use, and the streets and alleys of a town; and as to the streets, it may be asked whether the King could rightfully have granted them. This will not be pretended by any one."

Barclay v. *Howell. lessee*, 6 Peters., 498.
Cincinnati v. *Lessees of White, id.* 431.
Rowan v. *Portland*, 8 B. Munro, 232.
Newport v. *Taylor*, 16 *id.* 699.

In *Kennedy's heirs* v. *The Trustees of Covington et al.*, (8 Dana, Ky. R., p. 50.) At p. 61, the Court say: "Why was the common not extended to the river? And why, nevertheless, was the river made one of the boundaries of the town? The reason, as we presume, was this: only that it was deemed important thus to secure to the town a free access to the river, and the certain enjoyment of such riparian privilege," etc.

A grant is a contract, and binding upon the sovereign.

Fletcher v. *Peck*, 6 Crouch, 87.

A State cannot impair the obligations of contracts.

Smith's Com. on Common Law, Secs. 252, 253.

Vested civil rights cannot be affected by repeal.

Smith's Com., Secs. 759, 760. 761, 762, 763.

Tennett v. *Taylor*, 9 Crouch, 43.

Planter's Bank v. *Sharp*, 6 How. R., 301.

Commonwealth v. *Cullen*, 13 Penn. S. R. 133.

Backus v. *Lebanon*, 11 N. H. R., 19.

2d. An obstruction to this right cannot be authorised except upon compensation.

Bowman's dev. v. *Wathen*, (2 McLean, 376,) speaking of riparian owners:

"He has the right of fishery, of ferry, and of every other right which is properly appendant to the owners of the soil, and he holds every one of these rights by as sacred a tenure as he holds the land from which they emanated. The State cannot either directly or indirectly divest him of any one of these rights, except by the constitutional exercise of the power to appropriate private property for public purposes; and any act of the State short of such an appropriation, which attempts to transfer any of these rights to another without the consent of the proprietor, is inoperative and void, and can afford no justification to the grantee against an action of trespass."

The People v. *The Canal Appraisers*, (13 Wend. R. 355.)

At page 372, the opinion says: Where private property of any description is destroyed, and its beneficial enjoyment is essentially impaired in the prosecution of the public works, it is taken for public use within the meaning and spirit both of the Constitution and the canal laws, and the owner is entitled to just compensation.

See also,—

New Orleans v. *The U. S.*, 10 Peters. 729.
People v. *Platt*, 17 Johns. 195.
Taylor v. *Porter*, 4 Hill, 140.

In the case of *Rymir & Yates* v. *The City of Milwaukie and Alex'r Miller*, decided in the Supreme Court of the United States, Dec'r T. 1870, Mr. Justice Miller, delivering the opinion of the Court, says: "But whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream; and among those rights are access to the navigable part of the river from the front of his lot; the right to make a landing, wharf, or pier, for his own use, or for the use of the public, subject to such general rules and regulations as the Legislature may see proper to impose, for the protection of the rights of the public, whatever those may be." * * * * * *

"This riparian right is property and is valuble, and though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired.

It is a right of which once vested the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation."

In the case, *The St. Paul and Pacific R. R. Co.* v. *Schurmer*, 7 Wallace (U. S.) R. 272, Clifford, J., delivering the opinion of the Court, says: "That Congress in making a distinction between streams navigable and those not navigable, intended to provide that the common law rules of riparian ownership should apply to lands bordering on the latter, but that the title to lands bordering on navigable streams should stop at the stream, and that all such streams should be deemed to be and remain public highways.

"Although such riparian proprietors are limited to the stream, still they also have the same right to construct suitable landings and wharves for the convenience of commerce and navigation, as is accorded to riparian proprietors bordering on navigable waters affected by the ebb and flow of the tide."

And an erection in the waters of a port by virtue of a grant from the King, will be abated as a nuisance.

Attorney-General v. *Parmenter*, 10 Price Exchec. R. 378.

And the obstruction of riparian rights will be enjoined, and the Attorney-General need not be joined.

Attorney-General v. *Earl of Lonsdale*, L. R. 7 Eq. 377.

IV.

The Act of March 5th, 1864, Chap. 149, creating the Board of Harbor Commissioners, did not confer on that corporation the authority to obstruct complainant's wharf.

The 2d Section of the Act provides, "The Commissioners shall, as soon as may be, after entering upon their duties under this Act, investigate and ascertain by what authority any portion of said water-front is possessed and held by persons or parties adversely to the possession of the State, through such Commissioners, and shall publish the result of their investigations in one of the newspapers printed and having the largest circulation in said City and County of San Francisco; and if any person or company, in the possession of any portion of said water-front, holding the same adversely to the State, shall, when required by the Commissioners to make known to them the authority by virtue of which such person or company claims to hold such possession, refuse or neglect to make the same known, the Commissioners shall institute such legal proceedings as may be necessary to discover the nature of such authority."

"The said Commissioners are hereby authorised and empowered, in the name of The People of the State of California, to institute actions at law or in equity, for the possession of any wharf or wharves, or other rights, privileges, franchises

and so forth, named in this section; or for the recovery of the tolls, dockage, rents and wharfage thereof."

The foregoing comprises all the power and authority conferred on the Commissioners, in relation to wharves held adversely to the State, and gives them no power to invade or obstruct property of the kind so situated, but in reference thereto gives only specific powers, well defined, distinct and unambiguous, and insusceptible of construction.

A corporation in the exercise of its powers, is limited to those which are specially conferred upon it.

Authorities *passim*.

WM. IRVINE,
Solicitor for Appellant.
S. HEYDENFELDT,
Of Counsel.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

In the Supreme Court

OF THE UNITED STATES.

Adolph C. Webber,
Appellant,

vs.

The Harbor Commissioners of the State of California,
Respondent.

Argument of John F. Swift, *of Counsel for Defendant.*

I.

The lands and tenements which have given rise to this suit are, and have been time out of mind, covered by the waters of the bay of San Francisco at extreme low tide, and are situated in front of the city of San Francisco, at a point where the bay is several miles in width.

The original title is therefore to be treated according to the law as settled by this court. It is not derived from the Federal government, but was from the first the land of the State of California by virtue of her sovereignty.

Such being the law and the facts, the question of what would have been the effect had the land in the first instance been sold to an individual by the United States, as meandered along or bounded upon a river, navigable or unnavigable, as in the cases relied upon by plaintiff, viz.: Rymer & Yates *vs.* Milwaukie, 10 Wallace, 498, and the St. Paul & P. R. R. Co. *vs.* Shurmer, 7 Wallace, 272, cannot be of any importance in deciding this cause.

Nor do the customs of England concerning ways, easements and riparian rights cut any considerable figure.

It is the opinion of the ablest jurists that the common law has been adopted in California only as a rule of construction.

Hittell's Dig., sec. 599.

But if it is the law in the fullest sense as a rule of action, it is so by virtue of the enactment of the State Legislature, and that Legislature which gave it force can repeal it at pleasure, always supposing that no rights of property have grown up which are preserved by the Constitution, State or Federal.

It being assumed that in dealing with the property and franchises claimed by plaintiff in San Francisco bay, the power of the Legislature within the scope and boundaries of this case was practically unlimited; it remains to be seen what the Legislature has done.

The lots of the plaintiff were of lands held by the State, not of any superior, but in pure and absolute ownership. Subject to such restrictions as may have been laid upon it by the Constitutions, State and Federal, the Legislature of California could do with it at will.

It could keep it against all power save that of war. It could put it to any use it might see fit, except that Congress would abate any obstruction to navigation under its constitutional power to regulate commerce, and it could grant it to an individual to be held at will for years, for life, or in fee, and upon such conditions as it might please.

This grant by the Legislature can not be measured by a conveyance from one citizen to another. An individual who conveys land to another does so subject to the laws then in force. If the common law of England be the rule, the conveyance carries with it all of the consequences of that rule.

He cannot annex to an estate in fee a condition not to alienate, nor can he mount a fee upon a fee, and if he attempts such a thing the conditions are void and the estate passes discharged of them.

Not so with the Legislature in granting the lands of the State. It need not be restricted to common law estates, conditions or limitations. It can at its pleasure devise new ones, can restore estates tail, and possibly revive the feudal system at least as to the tenure of land, can annex any condition upon its grant that it will and can provide that the condition shall run with the land for all time.

The grant or act whereby plaintiff derives title to his lots, is itself a law, and to that law we must look to determine the character of the estate limited.

The existing Legislative acts at the time the plaintiff's predecessor acquired his estate enter into the essence of his grant, and are to be read as part of his title.

By turning to those acts it will be seen that the State persistently retained and has never parted with the power to control and regulate the water front of San Francisco, sometimes directly by the Legislature and at others doing so through the municipal corporation of San Francisco.

In the first charter of San Francisco, enacted in

1850, the following powers are expressly granted to the Common Council, viz., "to erect, repair and regulate "public wharves and docks; to regulate the erection "and repair of private wharves, and to fix the rate of "wharfage."

Statutes of California, 1850, p. 227.

This was the law at the time the act known as the "Water Lot Bill," under which plaintiff derives title was passed.

The following year (1851) a new charter was given to San Francisco with even more enlarged powers to the common council of dealing with the water front, in these words.

"For the laying out, making, opening, widening, regulating and keeping in repair, all streets, roads, bridges, fences, public places and grounds, wharves, docks, piers, slips, sewers, wells and alleys, and for making the assessments therefor."

"For regulating and collecting wharfage, dockage and cranage, upon all water craft, and all goods landed."

Cal. Stat. of 1851, p. 361.

And in the appropriations for the sinking fund, it appears that money to be received for "wharfage, rents and tolls," shall go to that fund.

Cal. Statutes of 1851, p. 361.

Just at this period, March 26, 1851, was passed the Act of the Legislature which is the foundation of plaintiff's title. It is known in California as the "Water Lot Bill."

Cal. Stat. 1851, p. 307.

Section 1 describes, by exterior boundaries, the land to be known as "The San Francisco Beach and Water Lots," and which includes the lots of the plaintiff.

Sec. 2. "The use and occupation of all the land described in the first section of this act is hereby granted

to the city of San Francisco for the term of ninety-nine years from the date of this act," except certain alcalde and other grants, situated within the boundaries described."

Sec. 4. That the boundary line described in Section 1 of this act shall be and remain a permanent water-front of said city, the authorities of which shall keep clear and free from all obstructions whatever the space beyond said line to the distance of five hundred yards therefrom.

Sec. 6. Nothing in this act shall be construed as a surrender by the State of its right to regulate the construction of wharves or other improvements, so that they shall not interfere with shipping and commercial interests of the bay and harbor of San Francisco.

I respectfully call attention to Section 6, as being directed at the city of San Francisco, who was the grantee for ninety-nine years in the act, and at the same time had the power to regulate the harbor affairs under its charter. It was a warning to the municipality, which then had control of the harbor by virtue of its charter, that the State would not, and did not, surrender its final right of control. It could not have been deemed necessary to put in such a clause as to private persons, for Section 4 of the same act shut them out of all claims of a riparian character upon land beyond the "*Red line*," by requiring it to be kept free and clear of all obstructions for five hundred yards. It was, therefore, a *salvo* for the State as against any pretence of the city, that she was to be permanent master of the chief harbor of the State.

The "Water Lot Bill" was followed by "An Act in relation to the city of San Francisco," passed May 1, 1851.

Sec. 1. "The city of San Francisco is hereby au-

thorized and empowered to construct wharves at the end of all the streets, commencing with the bay of San Francisco," &c., &c. "And the city is authorized to prescribe the rates of wharfage that shall be collected on said wharves when constructed."

"The space between said wharves, when they are extended, which is situated outside of the outer line of beach and water lot property, as defined by the Legislature, shall remain free from obstructions, and be used as public slips for the accommodation and benefit of the general commerce of the city and State," Cala. Stat., 1851, p. 311. Which is to say, that instead of the plaintiff's having the right to "*wharf out in front of him*," to the centre of the bay, it is to be kept open, not for his benefit, but for the accommodation and benefit of the general commerce of the city and State, which is quite another thing.

The State had now granted all the land inside the "red line" to the city of San Francisco for ninety-nine years. Leaving, however, wherever the subject was touched upon, clear and distinctive reservations of the harbor and water front outside the line.

It was then thought desirable to sell the reversionary estate in "the beach and water lot property."

This was provided for by the act for that purpose, May 18, 1853. In the act to sell the interest of the State in the beach and water lots, section 1 provides for the appointment of five commissioners, who shall have the "charge and disposition of the property and interests of property" of the State of California in the city of San Francisco, situated within the water line front, as mentioned and described in sec. 5 of the act.

Sec. 5 provides that the commissioners shall "enter upon and take possession of all the property and interests of property, of whatever description, of the State of California, within the line fixed by the "act to provide for the disposition of certain property of

the State of California, passed March 26, 1851, and defining the present water front of San Francisco, viz.: "The Water Lot Bill." And to dispose of the same, &c.

Sec. 7 provides "that the commissioners shall first ascertain the extent, nature and character of all the property and interests of property of the State of California, situated within the line in sec. 5 of the act referred to, and as soon thereafter as possible they shall proceed to sell at public auction, in the city of San Francisco, all the right, title and interest of the State of California, of, in and to all the said property or interests of property."

"Such sale shall be made by lots, as the same are now laid out on the official maps of said city, and where none such are laid out, then in such lots as may be laid out by the board in conformity with the said maps. But no slip authorized by law to be kept open as a slip shall be sold, but the same shall remain open for the purposes of commerce until otherwise ordered by law."

California Stats., 1853, p. 219.

On the 5th December, 1853, was passed "Ordinance 481" by the Common Council of San Francisco, whereby the lots of plaintiff were ordered to be sold.

This ordinance will be found set forth in the brief of Mr. Ryan in this case, p. 43.

The sale took place on the 26th December, 1853, whereby the plaintiff's predecessors obtained whatever title the city could give, under the "Water Lot Act" of March 26th, 1851.

The reversionary interest of the State he appears to have obtained from the commissioners under the Act of May 18th, 1853, on the 7th of November, 1855.

From the testimony, he seems to have built a wharf out over the "red line," and into the slips in front

of his lots in 1854. In his opinion, the provisions of the Acts of 1851 and 1853, declaring that the space outside the "red line" should be kept open and free for commerce, applied to all the world except himself. The people must be bound; the city government must be bound; only the plaintiff or his predecessors ought to be allowed to drive piles and to obstruct the navigation of the bay. For such is the position taken by his counsel.

And this claim is still maintained, for this suit is not brought to abate a nuisance in front of his property, not to keep open that space which he in another breath declares should be kept open, but in order that he alone shall be allowed the sovereign right to construct out into the sea to the centre thereof.

II.

As to the Question of Contract between the State and the Plaintiff.

It is urged by the plaintiff's counsel, "that the "establishment of the permanent water-front of San "Francisco by the Act of March 26, 1851, was a con- "tract between the public and the owners of the prop- "erty."

If it was a contract for anything, it was that the space outside the "red line" for five hundred yards, should be kept free of obstructions. And this the plaintiff was the first to break, by "wharfing out" upon it.

Is the State alone to be bound, and the property owners not?

The entire act, as well as the body of the law

at the time, go to make up the contract, if there be one. By that we find that the Legislature purposely restricted the city, and consequently those coming in under its title, to the ownership of the land, up to the "red line." Easements and rights of that character may arise by implication without being expressed, as where land should be sold in the centre of other lands of the grantor. The law probably, in the absence of express terms, would imply that a right of way to reach it was intended over the grantor's land.

But here nothing is left to implication or intendment.

The State had always reserved, most cautiously, the ultimate power to regulate and deal with the water-front outside the "red line." This was the law when plaintiff obtained his title, and he took his lot subject to that reservation.

The contract, then, is not that he shall have the riparian right to "wharf out" in front of him, but that he shall not have it. He alone has broken both his contract and the law.

III.

AS TO THE STATUTE OF LIMITATIONS.

It cannot be that the provisions of the Californian Statute of Limitations apply to this case.

The claim of plaintiff is a claim for a franchise by prescription. And while I have been able to find some vague suggestions of the law book makers about the analogy between the time necessary under statutes of limitations to bar an action, and that required to establish a title by prescription, yet I have found no solitary instance where any court authorized to publish its decisions in England or America has formally, in an adjudged case, decided that they are the same.

And to so decide would be to make law, for such never was the law before.

But statutes of limitation, at least until vested rights have grown up under them, are always under the control of the Legislature, which may, and often does modify and even repeal them altogether.

We claim in this case it has done so, as to the class of cases represented here, by the Act of 1863, creating the Board of State Harbor Commissioners, and requiring them to take possession of the water front.

Sec. 2. of that act provides, among other things, that the commissioners "shall take possession of and hold all that portion of the bay of San Francisco lying along the water front of said city and county of San Francisco and adjacent thereto, to the distance of six hundred feet into the waters of said bay from the line of the water front, as defined by an Act of the Legislature approved March 26, 1851, together with all the improvements, rights, privileges, franchises, easements and appurtenances connected therewith, or in anywise appertaining thereto, &c., &c.

The same section (2) gives these commissioners authority in terms " to institute actions at law or in equity for the possession of any wharf or wharves, or other *rights, privileges, franchises*, &c., named in the section, &c., &c., and to prosecute the same to final judgment."

Cala. St. 1863, p. 406.

This act was passed less than ten years, viz., nine years after the plaintiff had built his wharf out over the " red line," which was 1854 and the effect of it is to repeal the Statute of Limitations cited by plaintiff's counsel, from 2 Hittell's Dig., sec. 43 and 45, as to the particular class of cases named in the Act of 1863.

The Statute of Limitations says, " the people of this State will not sue any person for or in respect of any real property," &c., &c., except under a state of circumstances therein named.

Sec. 2 of the Act of April 24, 1863, says that the State harbor commissioners in the case of a building out over the "red line," and exercising a franchise there, which is plaintiff's case, *shall* sue for such rights and franchises, and prosecute and conduct the suit to final judgment.

The right to sue for, involves the right to take peaceful possession of, without suit.

IV.

As to the Authority of the Harbor Commissioners to obstruct Plaintiff's Wharf.

The answer is that he has no right to have a wharf, and especially has no right to the franchise of collecting wharfage and tolls on the water front of San Francisco.

It was the duty of the commissioners to take possession of all such franchises and to collect the wharfage and tolls themselves, and in building in front of him, and in themselves collecting for the State the wharfage and tolls they substantially do take possession of the franchises, privileges, &c., as they are required to do by section 2 of the Act as above cited.

Again, even if the Commissioners have not the legal authority to build out into the bay, it being established that the rights of the plaintiff in error are not specially interfered with, he cannot maintain this suit. For the abatement of a *purpresture* or obstruction to the navigation of a bay or river, the attorney general for the people has alone the authority to interpose and demand its removal.

This is a rule too well *settled* to require authorities in this court.

John F. Swift,
Solicitor and Special Counsel for
The Harbor Commissioners,
Defendants in Error

In the Supreme Court

OF THE

United States.

ADOLPH C. WEBER,
Plaintiff and Appellant,
vs.
THE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA,
Defendants and Respondents.

BRIEF AND ARGUMENT OF RESPONDENTS.

The roadway, wharf and navigable waters on either side of wharf of which the appellant claims the possession, are stipulated to be (*vide* Judge's notes hereto annexed, p. 5,) wholly without the line of the water front of the City of San Francisco, as established by an Act of the Legislature of the State of California, passed March 26th, 1851, (Laws of 1851, p. 307, Chap. 41.) The first Beach and Water Lot bill, as the above is commonly called, by its fourth section made the red line (that is, the outer red line on

the copy of the Eddy map hereto annexed which bounds the space marked East street on the east,) the permanent line of the water front of the City of San Francisco, and required the space beyond it to be kept free from all obstructions. The second Act (Laws of 1851, p. 311) required the spaces between the wharves outside the red line to be kept free from obstructions for public slips. Thus the entry and occupation of complainant has been not only illegal but in direct violation of the statutes of the State, and since the passage of the Act creating the "Board of State Harbor Commissioners" (Laws 1863–4, p. 138,) such occupation has been criminal, and by the 20th Section of said Act, it was made a misdemeanor for any person or company to collect wharfage, or to interfere with said Board of State Harbor Commissioners in the use and occupation of the property outside of the line of said water front. By an Act of the Legislature of the State of California, entitled "An Act to provide for the improvement and protection of the wharves, docks and water front in the City and County of San Francisco," approved April 24th, 1863, approved March 5th, 1864, (Laws 1863–4, p. 138,) the Board of State Harbor Commissioners were created, and by the 10th Section of said Act, said Board were empowered and directed to construct the outer half of a certain street called East street. In obedience to said statute, said "Board of State Harbor Commissioners," in

the name and by the authority of the people of the State of California, did, on or about the 14th day of March, cause the capping and piling complained of in the complaint herein, to be done. The facts, as above stated, cannot, we believe, but lead to the following conclusions:

I.

THAT THIS IS A CASE IN WHICH APPELLANT COULD NOT ACQUIRE TITLE BY PRESCRIPTION.

First. We do not concede that this is a case to which the Statute of Limitations has any application, because that Statute, we submit, applies only to land as such held by the State under grant from the Government, or otherwise acquired, to be used or disposed of at its pleasure, and not to the rights which it holds by virtue of its sovereignty, in trust for the benefit of the whole people. It needs neither argument or authority at this day to establish that the Legislature could not grant away the exclusive use of the entire Bay of San Francisco to individuals, and if not the whole, they could not any part that would interfere with the general and beneficial use. They certainly cannot do by neglect what they could not by express grant.

Second. The Statute of Limitations expressly says, "Lands shall be deemed to have been possessed and occupied in the following cases only:

"First. Where it has been protected by a substantial enclosure."

Second. Where it has been usually cultivated or improved. 2 Hittell's Digest, Section 11, foot page 634.

Now there is certainly no aspect of the Statute in which appellant can be said to have occupied and possessed any portion of East street, which is admitted to be one hundred and fifty feet wide. (*Vide* copy of Judge's notes hereto annexed, p. 5.)

Third. The deeds originally given by the City of San Francisco, and under which appellant claims title, were void. (*Vide City of San Francisco* v. *Huzen*, 5 Cal., 169.) Subsequently appellant's grantors, McCarthy, Mary Grant and Tevis, took deeds from the City for the said water lots, bearing date respectively May 28th, 1864, May 4th, 1864, and October 26th, 1865, given by the City in pursuance of a certain Act of the Legislature of the State of California, entitled "An Act to give further powers to the Board of Supervisors of the City and County of San Francisco," approved April 17th, 1862. (Laws 1862, p. 265.) Thus appellant's grantors acknowledged that the title to said water lots was in the City and State at the date of said deeds, and are estopped as we conceive from setting up a prior adverse possession.

Fourth. We insist that the Act of the 24th of April, 1863, (Laws 1863–4, p. 138,) substantially repealed the Statutes of Limitations,

if it had before applied to such cases. It rendered, as we have before said, the occupation of the complainant criminal, and by the 20th Section, it was made a misdemeanor for any one to collect wharfage, or to interfere with the "Board of State Harbor Commissioners" in the use and occupation of the property outside the line of the water front.

II.

APPELLANT IS NOT A RIPARIAN PROPRIETOR.

"A riparian proprietor is one who owns land bordering upon a water course." (2 Bouvier's Law Dictionary, 447.)

To maintain his pretensions to riparian rights appellant must show:

1st. *That he is the owner of land.*

2d. *That said land borders upon a water course.*

3d. *That said water course is a fresh water stream.*

4th. *That the description of said land contained in the grant, or deed thereof, entitles him to riparian rights.*

We do not think it necessary to argue at length the question of ownership, but would respectfully beg a consideration of the following facts:

1. That Ordinance No. 481, of the City of San Francisco (a copy of which is hereto annexed), under which appellant claims title by purchase to the ninety-nine years leasehold interest of said city, and all the sales of property

made under it, have been held to be void by the Supreme Court of the State of California. (*Vide City of San Francisco* v. *Hazen*, 5 Cal. R., 169.)

2. That appellant's grantors held possession of said lots under deeds given in pursuance of said Ordinance No. 481, up to and until the deeds of said city to McCarthy, Mary Grant and Tevis, dated, respectively, May 28th, 1864, May 4th, 1864, and October 26th, 1865—that is, subsequent to the passage of the Harbor Commissioners' Act.

3. That the small wharf and roadway in front of said lots is not mentioned in, or pretended to have been conveyed by, any deed prior to that of Smith to Tevis, dated June 8th, 1861.

SECOND—*Does the land in question border upon a water course?*

This question is answered by appellant's chief witness, G. T. Mayre, who testifies that "Lots marked Tevis and Pringle, and Roadway and Wharfs, are within the ebb and flow of the tide; water about ten or fifteen feet deep, navigable waters of the bay." (*Vide* pages 4 and 5 of copy of Judge's Notes, hereto annexed.) This testimony is uncontradicted.

The "Eddy Map," a copy of which is hereto annexed, also shows that all of the said "lots" were situated in, and a part of, the navigable waters of the Bay of San Francisco.

It is obvious, then, that the said "water lots" cannot be said to be, in any sense whatever,

"land bordering upon a water course." They are a part and portion of the navigable waters of the said Bay of San Francisco.

THIRD—*Is the Bay of San Francisco such a "water course" as would entitle the owner of land bordering upon it to "riparian rights?"*

If the doctrine of riparian rights had its origin in the natural wants and necessities of mankind, and was established for the purpose of securing food and drink to those who lived upon the banks of water courses, it should cease where these objects cannot be effected. If any such rights were allowed on navigable waters, they would come in conflict with the natural and inalienable rights of all mankind to navigate over the same, and would greatly obstruct commerce. It seems to us that it was for such reasons that this doctrine of riparian rights was limited to *fresh water courses*, and was never applied either to the sea, or an arm or bay thereof, or to a navigable river where the tide ebbs and flows.

Chancellor Kent says (3 Kent's Com., § 411–12) that it was a settled principle at common law to limit riparian rights to "*fresh water rivers above the ebbing and the flowing of the tide*," and to subject such rights to the *jus publicum* where these "*fresh water rivers* are navigable for rafts and boats," and that "all erections or impediments made by the owners to the obstruction of the free use of the river as a highway for boats and rafts are deemed *nuisances*." He declares,

also (3 Kent's Com., § 427), "It is a settled principle in the English law, that the right of soil of owners of land bounded by the sea, or on navigable rivers where the tide ebbs and flows, extends to high-water mark, and the shore below common, but not extraordinary high-water mark, belongs to the State as trustee for the public; and in England the crown, and in this country the people, have the absolute proprietary interest in the same. The public have at common law a right to navigate over *every part* of a common navigable river, and on the large lakes; and in England, even the crown has no right to interfere with the channels of public navigable rivers. They are public highways, at common law. The sovereign is trustee for the public, and the use of navigable waters is inalienable. But the shores of navigable waters, and the soil under them, belong *to the State* in which they are situated, as sovereign." (*Vide Pollard* v. *Hagan*, 3 How. U. S. Rep., 212.)

In *Child* v. *Starr* (4 Hill, N. Y. Rep., 372), most of the questions herein involved are very ably discussed, and decided adversely to appellant; and it is distinctly laid down that a river has *ripæ*, but where the tide ebbs and flows there is only *littus*, and that riparian proprietorship or rights exists only where there are *ripæ or banks*.

In *Dana* v. *The Jackson Street Wharf Company* (31 Cal., 120,) the questions raised in this suit are decided adversely to appellant. The Court say:

"It is claimed, however, that the plaintiff is a riparian owner, and as such has a right to 'wharf out' against his own land; and therefore that the wharf, though built by the defendant, inures to the plaintiff's advantage; and that the present right of entry thereon is vested in him, and not in the people.

"A riparian proprietor on navigable water has no right at common law to wharf out against his own land. By the common law any erection below high water mark, without license, is regarded as an encroachment and intrusion on the King's soil, which the King may demolish, seize or arrent at his pleasure. (Ang. on T. W., 199.) This shows decisively that in cases of purpresture the right of entry is not in the adjacent land owner but in the crown. It has been held in some of the States that the riparian proprietor owns the soil between high and low water mark, or that he is at least so far interested in it that he can wharf out to the line of low water as against the people, if the wharf does not amount to a nuisance. But these decisions are all of them based upon local legislation or local usage.

"But further: We do not consider that the plaintiff is a *riparian* proprietor in the sense in which that term is used in the law of tide waters. He is not an owner upon the 'shore,' but upon a 'water front' of statute creation. The water front established by the Act of March 5th, 1851, is what that Act has made it to be, and the rights

of the plaintiff as the owner of a beach and water lot abutting upon it, exist only in subordination to that Act. It is provided in the fourth section of the Act that the boundary line described in the first section 'shall be and remain a permanent water front of said city;' and special provision is made for keeping it free and clear of all obstructions. If the water front could be extended on the ground of marine increase by reliction or alluvion, or by any other kind of accretion, so that the owner of the water lot immediately adjacent would have a right of entry thereon to the exclusion of the State, then the water front, as limited by the red line of the Act, would or might be an ever-shifting instead of a permanent line.

"There is another reason why rights, incident to ownership upon the shore of navigable waters, cannot be considered as incident to ownership upon the 'water front' in the Harbor of San Francisco. 'Shore' is the space between high and low water mark. Against the plaintiff's water lot there is no such space. The water front at that point is below low water mark, and there can be no riparian right to build a wharf or pier beyond it; and it follows that if a wharf should be built by a stranger below the line of low water, that the owner of the adjacent upland would have no right of entry upon it on which he could maintain ejectment. (*Dutton, et al.*, v. *Strong*, 1 Black., 23.)"

FOURTH—*Does the description of said "water lots" contained in the original deeds given by the City and State, grant to the appellant riparian rights?*

Why did the City and the State, in their respective deeds to appellant's grantors, describe the "water lots" sold by them, by certain clearly defined and well established boundaries and limits, if it was intended to convey any land or "water lots" outside of said limits? Why did the City bound the said "water lots" on the east by the westerly line of East street, if it was the intention to grant them the water property to the east of that line? Why do the said deeds refer to a certain official map of said City of San Francisco (Eddy's map hereto annexed), and to the streets as laid down on said map, as the boundaries of said lots, if it was not the intention of said grantors to confine their grantees within the lines of said streets bounding the "water lots" thereby conveyed? What was the design and intention of said grantors in designating and declaring the said "water lots" to be the same as those designated Numbers 113, 114, 115, 118, 119, 121 and 122, on a certain map termed "Gardiner's Map?" (*vide* stipulated copy of portion of said map hereto annexed.)

It seems to us quite evident that the said original grantors by using all these several means and kinds of descriptions designed to confine their grantees within well defined limits, to restrict them to the rights and privileges of other

owners of city lot property, and to restrain them from claiming any property or rights of property other than those described.

Each and all of the deeds in the Abstract of Deeds annexed to the statement, except that from Mayre and Frank to Weber, dated September 30th, 1867, which is defective in description, bound water lots 122 and 119 on the east by the westerly line of East street. (See copy of abstract hereto annexed.)

Grants to land below high water mark being made by a trustee for the public, should be construed most favorably for the grantor and against the grantee, and no alienation should be presumed that is not *clearly and indisputably expressed.* (3 Kent's Com., § 432; *Storer* v. *Freeman*, 6 Mass. Rep., 438; *Cortelyou* v. *Van Brunt*, 2 Johns. Rep., 357.)

That the decided and controlling words and specific description in conveyances are to govern. (*Vide* 3 Kent's Com., § 429; *Waterman* v. *Johnson*, 5 Pick. Mass. Rep., 423.)

That the maps by which land is conveyed are by a well established rule of construction a part of the conveyance. (*Vide Lincoln* v. *Wilde*, Maine Rep.. Vol 16, p. 179.)

The right of a grantor to limit his grantee to certain boundaries, and to cut him off from all riparian rights, is established by numerous authorities. (*Vide* 3 Kent's Com., § 434; *Den* v. *Wright*, Peters' C. C. Rep., 64; *Dunlap* v. *Stetson*,

4 Mason's Rep., 349; *Child* v. *Starr*, 4 Hill N. Y. Rep., 372.)

That the appellant is estopped by the description of said water lots contained in the deeds from said City of San Francisco, and State of California, from denying the existence of East street, and that the western line of said East street is the eastern boundary line and limit of the said water lots. (*Vide Parker* v. *Smith*, 17 Mass. Rep., 411; *Hammond* v. *McLachlan*, 1 Sand. N. Y. Rep., 328.)

We conclude, therefore, that appellant is not a "riparian proprietor"; first, because said "water lots" do not border upon a water course; secondly, because the said Bay of San Francisco is not such a water course as would entitle the owner of land bordering upon its shores to riparian rights; thirdly, because the description of said "water lots," contained in the deeds from the city and State, which are the only contracts made by them, does not entitle appellant to riparian rights, but would clearly deprive him of any such rights if they ever existed.

III.

ACTS COMPLAINED OF WERE DAMNUM ABSEQUE INJURIA.

Even if appellant was a riparian proprietor (which we do not admit,) he has no private right or property in the waters of said bay of San Francisco, or in the shore thereof, between

high and low water mark, but that the same are public rights which are under the control of the Legislature, and any loss or damage sustained through the Act of the Legislature affecting them is *damnum absque injuria*.

This point we think has been definitely determined by the subjoined authorities in which the following language is used. In *Gould* v. *The Hudson River R. R. Co*, 2 Selden, p. 522, it is said: "The owner of lands adjoining a navigable river in which the tide ebbs and flows, has no private right or property in the waters of the river or in the shore between high and low water mark, and is therefore not entitled to compensation from a railroad company, which constructs in pursuance of a grant from the *Legislature* a railroad along the shore between high and low water mark, so as to cut off all communication between such land and the river, otherwise than across such road. Whatever rights the owner of the land in such case has in the river, or in its shore below high water mark, are public rights which are under the control of the *Legislature*, and any loss sustained through the Act of the Legislature affecting them is *damnum absque injuria*."

In *The People* v. *Tibbets*, 19 N. Y., 5 Smith, p. 524, the Court say: "Although the proprietors of land on the bank of navigable waters have rights to the use of such waters which cannot be impaired by individuals, yet such rights are subordinate to those of the State, and cannot

in any manner interfere with the exercise of such public rights."

In the case of *Lansing* v. *Smith*, 4 Wendell, p. 9, it is said: "The owners of lands adjacent to the shore of a navigable river, obtaining from the Commissioners of the Land Office a grant of land under waters, on which he erects a wharf after filling in the same, cannot sustain an action against the company to whom the Legislature subsequently give the privilege of erecting a mole or pier in the river for the purpose of constructing a basin for the safety and protection of boats, and who erect such mole or pier entirely encompassing the wharf on the side of the water, so as to leave no communication between it and the river; although the privilege of such owner of the wharf be materially impaired by the construction of such works, the loss sustained by him is *damnum absque injuria*, for which no action lies."

Lansing v. *Smith* is cited with approbation by Daggett, C. J. in the Supreme Court of Errors of the State of Connecticut, in the case of *Hollister* v. *The Union Co.*, 9 Conn., p. 444.

Angell in his work on Tide Waters, says, page 75, *et passim:* "There are two kinds of rivers, navigable and not navigable; that every navigable river so high as the tide ebbs and flows in it, is a royal river, and belongs to the King by virtue of his prerogative; but in every other river, and in the fishery of such other river, the ter-tenants on each side have an interest of com-

mon right; the reason for which is, that so high as the sea ebbs and flows, it participates of the nature of the sea, and is said to be a branch of the sea so far as it flows."

Now what in England belongs to the King, in our more free and equal system, belongs to the people, whose will is expressed and whose rights are represented by the Legislature. That the premises in controversy are in navigable waters, as technically understood, is not only not denied, but appellants on the 2d page of their Brief herein admit that they were covered by the waters of the bay of San Francisco. It is hardly necessary to argue as to the importance of a harbor to a people whose prosperity is dependent upon commerce. Destroy the harbor and the city becomes desolate. Once admit the right of individuals to obstruct a foot of the bay and you recognize their right to obstruct the whole bay, because a right is a right regardless of consequences. Concede what complainant asks and you give to him a power which neither the Federal Government or State Legislatures possess. Angell on Tide Waters, chap. 4th, page 86, says: "It will not be contended that, in the United States, either a State Legislature, or the Federal Government, can completely and permanently obstruct any arm of the sea, or navigable river, extensively beneficial to the people of the United States for the purpose of internal trade, and which has generally been resorted to for such purposes, as being capable of sustaining vessels

of a large description with their loading. The one could not thus totally annihilate navigation, because it would be in collision with the laws of Congress made by virtue of the power given by the Constitution to regulate commerce. The other manifestly could not do it, because it would conflict with a right which the States have never relinquished, the sovereign right of property in, and dominion over, all tide waters and the soil under them within their jurisdictional limits. It would moreover, if attempted by the legislative power of the general or of a State government, conflict with the free right of passage which the Constitution gives to the citizens of one State, within the jurisdiction of another." Appellant may say it is absurd to suppose for a moment that he would attempt the total obstruction of the harbor. This as to him may be true, but let us suppose on the other hand, that instead of appellant we had to deal with an individual imbued with the spirit that governed "The aspiring youth that fired the Ephesian dome," what would be the result? Grant for a moment that title to the soil or waters of the bay of San Francisco can be acquired by prescription, and you abandon the right to regulate their use. Concede that one foot can be thus lost, and you virtually abandon a right of the people to the whole.

IV.

THE WHARF ITSELF WAS A NUISANCE.

Before the wharf was erected, every citizen

coming to the port had a right to cross and recross the spot over which it was erected, and to moor his vessel there. This right belonged to the public, and no individual had authority to interrupt the public in the enjoyment of this right, much less to monopolize it. The public are the judges of their own advantages. Had the wharf been erected and given to the public without claiming wharfage or dockage, it might have been a question whether it was a nuisance or not; but one man cannot certainly appropriate a public benefit to his sole and exclusive use.

In the case of *The People* v. *Vanderbilt* (26 N. Y. 12 Smith, p. 287), the Court say: "An obstruction in a public river is a nuisance, such as the erection of a wharf, and at the common law any encroachment upon a public stream was considered to be a purpresture; that is to say, the making of that several and private which ought to be common to many."

In the case of *Hart* v. *The Mayor, etc., of Albany* (9 Wendell, 584), the Court say: "If the basin be considered merely as a part of the Hudson River (a great public highway), the right of the appellants permanently to appropriate any portion of it to their own exclusive use is equally unfounded. They, like all other citizens, can use it only as an highway for the purposes of navigation; they have no right exclusively to occupy any part of it by either floating or permanent buildings or obstructions. It would be a nuisance."

To same point, see *Hecker* v. *N. Y. Balance Dock Company* (13 Howard's Practice Reports, p. 549); *Hart* v. *Mayor of Albany* (3 Paige, p. 213).

Every continuance of a nuisance is a fresh cause of action.

3 Blackstone's Com., 220.
Brady v. *Weeks*, 3 Barb., 157.
Vedder v. *Vedder*, 1 Denio, 257.
Fish v. *Dodge*, 4 Denio, 317.
Beckwith v. *Griswold*, 29 Barb, 291.
Brown v. *Cayuga and S. R. R. Co.*, 12 N. Y., 492.
Staples v. *Spring*, 10 Mass., 74.

No length of time will legalize a nuisance.

Penwick v. *Morris*, 7 Hill, p. 576, affirming, 3. Hill, p. 621.
Dygert v. *Schenck*, 23 Wend., 446.

V.

PILING AND CAPPING BY RESPONDENTS NOT A NUISANCE.

That which is authorized by law cannot be considered a nuisance.

Hand, J., in the case of *Harris* v. *Thompson*, 9 Barb., p. 364, says:

"It is a legal solecism to call that a public nuisance which is maintained by public authority. Even an act of a corporation which would otherwise have been a nuisance, has been deemed law-

ful because authorized by its charter. Both bridges would have been considered nuisances in *Charles River Bridge* v. *Warren Bridge*, if they had not been authorized by statute. (11 Peters, 420–457)" and cites a number of authorities.

Bosworth, J., in *Leigh* v. *Westervelt*. 2 Duer, p. 620–621, says:

"What an express statute expressly permits designated officers to do, the Court cannot restrain them by injunction from doing. With the wisdom or expediency of the law, the Courts have nothing to do. They are bound to administer the laws as they find them, and would be direlect in duty if they failed to do so in any case on the ground that they deemed them unwise and inexpedient; nor are they at liberty to arrest the action of public officers charged by Statute with a public trust, and authorized to act according to their judgment and discretion, because Courts may think the Statute conferring the authority pernicious in its consequences, and one that ought to be modified or repealed."

Bacon, J., in the case of *Williams* v. *N. Y. Central R. R. Co.*, 18 Barb., p. 247. says:

"The aid of an injunction cannot be invoked to prevent, nor will an action lie to redress a consequential injury necessarily resulting from the lawful exercise of a right granted by the sovereign power of the State, or authorized by competent municipal authority. These considerations are decisive against the claim of the plaintiff to relief grounded on the allegation that the de-

fendants are interfering with his paramount right as proprietor of the *locus in quo* without any authority of law. That which is authorized by an Act of the Legislature cannot be a nuisance."

VI.

LAW CREATING BOARD OF HARBOR COMMISSIONERS, AND ACTS DONE UNDER IT DO NOT IMPAIR THE OBLIGATION OF CONTRACTS IN THE SENSE OF THE CONSTITUTION OF THE UNITED STATES.

Mr. Justice Catron, in the case of *Mills et al.* v. *St. Clair County et al.* (8 Howard U. S. S. C. R., p. 569), in delivering the opinion of the Court, says:

"The Constitution having declared that no State shall pass any law impairing the obligation of contracts, it becomes our duty to inquire whether the State law, and the acts done under it, violate a contract. If any contract was violated under the Act of 1839, it must have been a grant to land vesting the fee simple title; and such title complainants exhibit. To the width of needful roads and ferry landings, property can undoubtedly be taken, for the purposes of such easements; and necessarily, the State authorities must decide (as a general rule) how much land the public convenience requires. That the power may be abused, no one can deny; and that it is abused, when private property is taken, not for

public use, but to be leased out to private occupants to to the end of raising money, is too plain for reasoning to make it more so. Such an act is mere evasion, under pretence of an authorized exercise of the eminent domain; and if it be an evasion, it is void, and may be redressed by an action at law, like any other illegal trespass, done under assumed authority; as, for instance, a trespass by a younger grantee on land held by an elder patent depending for support on a State law of later date than the first grant. But it is not an invasion and illegal seizure of private property on pretence of exercising the right of eminent domain, and which act is an abuse claiming the sanction of a State law, that gives this Court jurisdiction; such law, and the acts done under it, are not "the violation of a contract," in the sense and meaning of the Constitution. It rests with State Legislatures and State Courts to protect their citizens from injustice and oppression of this description. The framers of the Constitution never intended that the legislative and judicial powers of the General Government should extend to municipal regulations necessary to the well-being and existence of the States. Were this Court to assume jurisdiction, and reexamine and revise State Court decisions, on a doubtful construction, that an interest in land held by patent was a contract, and the owner entitled to constitutional protection by our decision in case of abuse and trespass by an oppressive exercise of State authority, it would

follow that all State laws, special and general, under whose sanction roads, ferries and bridges are established, would be subject to our supervision. A new source of jurisdiction would be opened, of endless variety and extent, as, on this assumption, all such cases could be brought here for final adjudication and settlement; of necessity, we would be called on to adjudge of fairness and abuse to ascertain whether jurisdiction existed, and thus to decide the law and facts; in short, to do that which State Courts are constantly doing, in an exercise of jurisdiction over peculiarly local matters; by which means a vast mass of municipal powers, heretofore supposed to belong exclusively to State cognizance, would be taken from the States and exercised by the General Government, through the instrumentality of this Court. That such a doctrine cannot be maintained here has in effect been decided in previous cases; and especially in that of *Charles River Bridge* v. *Warren Bridge* (11 Peters, 539–540), where other cases are cited and reviewed."

VII.

APPELLANT NOT ENTITLED TO RELIEF IN EQUITY.

But even should the Court hold that property such as that in dispute can be acquired by prescription, or that the appellant was a riparian owner, or that the wharf was not a nuisance, yet we claim that the bill was properly dismissed;

first, because this is a case in which equity will not interfere, for the reason that complainant has complete and adequate remedy by action at law; second, because the right to the property is in dispute; third, because the injury is capable of satisfaction in a fixed and specific amount of damages; fourth, because the defendants are responsible parties, fully able to pay any amount of damage which the complainant may recover at law; fifth, because the injury is not irreparable. And to this point would cite the following authorities:

In the case of *The City of Georgetown* v. *The Alexandria Canal Company* (12 Peters, p. 91), the Supreme Court of the United States say: "If, then, as we have said, Congress had power to authorize the construction of an aqueduct across the Potomac; if so having the power, they have given to the Alexandria Canal Company the authority to construct it, and if in the construction the company has not exceeded the authority given them, either in the thing done or in the manner of doing it, so as to produce the least injury or inconvenience practicable consistently with the execution of the work, it would be difficult as a legal proposition to predicate of such a work that it was unlawful or that it was a nuisance, so as to justify a Court in interfering to prevent its progress towards completion. Any obstruction to a navigable stream, a part of the *jus publicum*, would, upon the most established principles, be what is declared by law to

be a *public nuisance*. Equity jurisdiction may be exercised in those cases in which there is imminent danger of irreparable mischief before the tardiness of the law could reach it; but the instances of its exercise in case of public nuisance are rare. If any individual shall have sustained special damage from the erection of it (a public nuisance), he may maintain a private action for such special damage."

In *Irwin* v. *Dixon et al.* (9 Howard, p. 28), the same Court say: "In case of injuries to individual rights, by obstructions or supposed nuisances, an injunction is still less favored, and does not lie at all permanently, in England and most of the States, unless the injury is not only greater to the complainant than to others, and of a character URGENT AND OTHERWISE IRREMEDIABLE AT LAW; but the right or title to raise the obstruction is not in controversy, or is first settled at law. *When all these prerequisites exist*, an individual, rather than only a public officer, has been allowed in chancery to obtain a perpetual injunction, though for a supposed public nuisance (2 Story's Eq. Jur., 924; 6 Johns. Ch., 439). But it is better for him, whether the nuisance be public or private, when the injury is not great and pressing, to resort for redress to a private action at law; but more especially is this form of redress not expedient to be adopted unless indispensable from the character of the damage, as an individual is not in point of law allowed at first anything but a temporary injunction to pre-

serve the property uninjured till an answer can be filed admitting or denying the right of the plaintiff; and, if during the latter, till a trial at law can be had of that right, when desired by the defendant or deemed proper by the Court." To same point, see

Waldron et al. v. *Marsh*, 5 Cal., p. 119.
Burnett v. *Whitesides*, 13 Cal., p. 156.
Branch Turnpike Co. v. *Supervisors of Yuba*, 13 Cal., 190.
Hart v. *Marshall et al.*, 4 Minn, p. 294.
Jerome v. *Ross*, 7 Johns. Ch., p. 315.
Story's Eq. Jur., Sections 864–925.

In conclusion, we would respecfully ask that the decree of the Circuit Court be affirmed, and the appeal therefrom dismissed.

T. T. CRITTENDEN,
Solicitor for Respondent.

THOMAS P. RYAN,
Of Counsel.

JUDGE'S NOTES.

U. S. Circuit Court, District of California.

MONDAY, November 29, 1869.

WEBER
vs.
LAIDLEY.
} IN EQUITY.

PATTERSON states case for Plaintiff.

SOL. SHARP states case for Defendant.

Plaintiff's Testimony.

G. T. MARYE—Have lived in San Francisco since 1849; known premises since 1853 (shown map in pleading); old wharf built by me in 1854, about three-fourths or south part; not long after, in same year, McCarty built rest of it. At town sale, in 1853, I bought Water Lots Nos. 121–2, marked Lloyd Tevis; McCarty bought at same time a small triangle lot marked on map; fronts on roadway; after I built on my lots I built a roadway in front; McCarty soon built a continuation of the roadway, so that it extended between Market and Commercial; roadway built on piles; water ten or twenty feet deep under the roadway; in 1854 commenced at intersection of Market street roadway and planked east 28 ft. 5 in.; thence north 35 ft. 6 in.; thence east 83

ft. 6 in.; thence north about 30 ft.; thence westerly through the space marked "Roadway" to the east side thereof. McCarty commenced on east line of yellow map, ten feet from center, and planked north to the point marked *F*, thence west to *G*, thence south to *H*, thence west to the east line of the roadway. In 1854, between McCarty and myself, we had piled, planked and capped all the space marked on map as roadway wharf and old wharf; we used it as a wharf thereafter; vessels laid on the north and south side of old wharf, etc.; so used by us until taken possession of by Harbor Commissioners; I and my successors kept it in repair, collected from $125 to $175 per month for use of wharf; McCarty got $125 per month—he had not so much space. Commissioners had advertised to pile from Market street to Clay; commenced work between old wharf and Commercial street, and piled and planked the whole space marked *water*, on either side of old wharf; rendered the wharf valueless; vessels could not come up on either side; about a year after piling and planking, Commissioners made a stone wall on east end of old wharf, piled stone in there; during this time no one claimed the property or disturbed me in the possession or occupation; I occupied, claiming to be owner.

CROSS-EXAMINATION.

Lots marked Tevis and Pringle and Roadway and Wharfs, within the ebb and flow of the tide; water about ten or fifteen feet deep, navigable

waters of the bay; I occupied the property up to 1855, then went away two years; I rented it then, and received the rents in my absence; left the property with an agent; when I came back I held the property by myself and tenants; planking on the grade of Market street, but a little lower down than Commercial; plank ten or twenty feet above low water, and about five feet above ordinary high tide; Commercial street then planked and same as now, also Market street, about 200 feet east of east line of old wharf; got from $125 to $175 for wharf, from time of building wharf to time of taking possession by Commissioners; after ten years had to re-cap and pile wharf; that only repairs and paid for out of receipts.

[Stipulated that west line of roadway, the water front in the Act of 1851, and the west line of East street, if there be an East street, and if there be such street that it extends thence east 150 feet.]

Ordinance No. 481, December 5, 1853, for sale and disposition of water lots.

Deed from City of San Francisco to Marye & Smith, January 16, 1854, for the premises marked *Tevis*, on map.

Deed from Marye & Smith to William Smith, same premises, September 20, 1854.

Deed from Wm. Smith to Whelan, same premises, July 10, 1856.

Deed from Whelan to Wm. Smith, same premises, September 14, 1857.

Deed from W. Smith to Brooks, same premises, June 24, 1858.

Act of March 26, 1851, p. 307; Ses. Laws relating to water lots, lease of; Act of May 18, 1853, and of May 1, 1855—sale of reversion of water lots.

[Stipulated that the Commissioners to sell the remainder of water lots adopted same lines and subdivisions that Commissioners to lease did.]

Deed from California to Wm. Smith, same premises, November 7, 1855, and deed same, both for lot Tevis.

Deed from Brooks to Austin Smith, September 9, 1858, same premises.

Deed from Austin Smith to L. Tevis, June 8, 1861, same premises.

Deed from City of San Francisco to L. Tevis, October 26, 1865, same premises.

Deed from Tevis to Marye, October 10, 1863, same premises.

Deed from Tevis to Emerick, June 16, 1866, same premises.

Deed from W. Smith and others to Emerick, December 31, 1866, same premises.

Deed from Emerick to Marye, April 20, 1867, same premises.

Deed from Marye to Weber, September 30, 1867, same premises.

[As to McCarty title, plaintiff puts in same Ordinances and Acts of Assembly.]

And also, deed from California to Grant &

McCarty, 7th November, 1855, for lot marked on map, *McCarty two deeds, same.*

S. MASTURULCH—Lived in San Francisco since 1860, corner of East and Market; know of wharf used by M. & Mc.; there when I went there in 1860, and still there; McCarty and Tevis' agent collected tolls there; vessels in the habit of lying at the wharf to load and unload; I was doing business then at corner of East and Market streets.

CROSS-EXAMINATION.

Commenced doing this there in 1860; in 1860 used to come vessels to wharf, same in 1851–2; smaller vessels since 1863; some called Sacramento and Market, and some Market and East.

[Stipulated that defendants commenced creating obstructions 14th March, 1867; stone wall commenced since commencement of suit.]

Deed from California to Faulkner, November 17, 1855, for part of same premises, the triangle.

Deed from Faulkner and Jones, February 18, 1856, part of premises.

Deed from Jones to Meegan, June 8, 1858, same premises as last.

Deed from Meegan to Hyman, June 19, 1858, same premises as last.

Deed from City of San Francisco to Grant & McCarty, March 22, 1859, confirmatory of former deeds.

Deed from Hyman to Cohen, July 18, 1860, same premises as conveyed to Hyman.

Death of Grant, March 2, 1564, by will devised interest in property to Mary E. Grant, his widow.

Deed from City of San Francisco to Mary Grant, May 4, 1864, *confirmatory.*

Deed from City of San Francisco to McCarty, May 28, 1864, confirmatory.

Deed same to same, August 11, 1866.

Deed from same to same, same date.

Deed from Cohen to McCarty, September 27, 1866.

Deed from McCarty to Leroy, December 29, 1866.

Deed from McCarty to Burcess, October 9, 1866.

Deed from McCarty and Burcess to Frank, June 10, 1867.

Deed from Frank to Weber, June 11, 1867.

Plaintiff rests, with leave to call a witness as to commencement of user and occupation.

Defendants' Testimony.

Offers to show that under Act of March 26, 1851, the Eddy or Red Line Map was referred to as showing the boundaries and location of East street.

Eddy Map read in evidence.

[Admitted that map, one referred to in Act of March 26, 1851.]

Offers to show in pursuance of Ordinance 481, that a survey and map made. City map, showing subdivision of City Slip property, in pursu-

ance of Ordinance 481. Objected to, and read subject to its legal effect.

Act of Assembly, March 5, 1864, creating Harbor Commissioners. (Sec. 3,468, Hittel's Digest.)

Act widening East street. (Hittel's Digest, *supra.*)

[Stipulated that Laidley, Tilton and Taylor constituted Harbor Commissioners at time of committing alleged grievances, and that such persons claimed to do what they did under authority of the Acts of the Assembly; also, that Acts do not interfere with the navigation of the Bay, and that Bay is there several miles wide. Admitted that sales by city, made in pursuance of Ordinance 481, and Gardner map made in pursuance of same.]

N. C. EFFORD called by Plaintiff.

Lived in city since October, 1860; have known between Market and Commercial since 1854; know that Marye & McCarty made wharf there in 1854 (shown map); planked over, what is marked "Old Map," between Sacramento and Commercial; I occupied one of buildings since latter part of 1854, and ever since wharf run out in front of me; small schooners used to lie on each side; Marye's side leased to Green for use of Sacramento line of vessels; McCarty collected tolls; I am on the lot marked Tevis.

DEFENDANT'S TESTIMONY RESUMED.

S. F. TILTON—[Shown map]—The wharf structure correct; slip on each side of "Old Wharf;" a narrow one, not so wide as on this map; saw premises before Commissioners drove piles; not open as water all the way between Old Map and Market street. Space marked water between Old Wharf and Market street same as diagram; slip on Commercial street about same; known property since 1863; roadway used as street; space marked wharf I considered part of the roadway, but used to store wood, etc.; sea wall top of thirty-five feet inside of east line of old wharf, base extends out east; a roadway north of Market street as far as Jackson, but not south of it prior to 1863; west line of roadway corresponds to west line of what is called East street; east line of East street extends to east end of old wharf; East street extends from Folsom to Pacific; I have always contended that street laid out and established, but I do not claim that open and used by public south of Market; did not go through between Jackson and Pacific; [Shown map of H. Commissioners 1864] map attached to pleading and called diagram; agrees with map as to water spaces north and south of old wharf; communication on East street unbroken between Market and Washington in 1863; from Jackson to Washington piles given way and unsafe; had been used as a street prior to that time; between Jackson and Pacific no communication; portion

of East street built on as a wharf; all piling by Commissioners within the red line of 1864.

[Testimony closed.]

ARGUMENT.

Heydenfeldt arguendo for complainant; also, Limitation Act, 3 Sec.

Incorporate right acquired by prescription. Kent, Sec. —, p. 441, Mar; 34 Cal. 365; 31 Cal. 585; 44 Cal. 289; 9 Cal. 5; 2 Black. 599; 10 Pierce Ex. Rep. 378, appropriating property; 14 Barb. 405; 13 Wend. 355; 17 John. 125; Question of street east; 9 Cal. 411; 22 Cal. 11.

READ THESE:—Ordinance 481, did it create East street; did not prescription good against it any how? Harbor Act proceeds upon theory that street used but not established.

Sol. Sharp for defendant asks leave to introduce:

Act to sell certain property on water front of San Francisco, April 26, 1858. Ses. Laws of 1858, p. 323. Allowed. Cites Sec. 6, 1851.

Ordinance 481, limits the lots to west side of East street.

Plaintiff could not acquire a title to East street by prescription.

Occupation of the plaintiff not of the water beside his wharf, but only within the area caused by wharf.

Act of Limitation State only says will not sue and may change its mind. The word *will* not binding upon State Act of 1863. Harbor Act

changes the will of the State, and that before ten years from the entry of plaintiff in 1854.

1 Grey, 203, 18 R.; 13 Pet. 595; 9 Snedes & Marshall, 421–31; 13 Sergeant & Rawle, 3; P. Chan. R. 318.

Right of party not been tested at law. 37 Penn. 506; 7 John. Chan. 315; 21 Cal. 645; 13 Cal. 157; Ib. 190; 5 Cal. 119; 3 John. C. 286.

TUESDAY, Nov. 30, 1869.

Sol. Sharp continues the argument for defendants:

When equity will interfere to abate a nuisance. Story Eq. S. 920–6; 9 How. 10; Willard's Eq. 382, 388, 392; Eden In. 259—1, 2, 3, 4, 5, 269—1, 2, 270—1, 2, 3; 13 How. 519; 31 Cal. 119, cited to show that plaintiff acquired nothing beyond the area actually occupied.

Read this:—1 Black, 31–3; 1 McAllister, 227.

Acts of Harbor Commissioners are by authority of law and cannot be a nuisance. 18 Barb. 243-4-5-7-8.

Read the latter part of this: 9 Barb. 364; 26 N. Y. 287. Read this: 18 Barb. 247-8; 12 Barb. 628.

Con. of Nuisance, 3 Black. 220; 3 Barb. 157; 29 Barb. 291.

Recitation deed as to East street estop the plaintiffs to deny that East street there. 17 Mass. 411.

Adverse possession of plaintiff and grantors did not commence until Harbor Commission appointed, and must be limited by the recitals in his deed.

Heydenfeldt arguendo for plaintiff:

Power of equity to enjoin a nuisance. 29 Cal. 156; 30 Cal. 379.

Private persons may own wharf. Angell on T. W. 171, Chap. vii; 7 Con. 186; 7 McLean, 382; 15 Con. 137.

[Case submitted.]

(Indorsed: Filed Dec. 15, 1869.)

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"ABSTRACT"
OF VARIOUS DEEDS.

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THE CITY OF SAN FRANCISCO

TO

GEORGE T. MARYE AND J. CALEB SMITH.

DEED.

Dated January 16th, 1854—Consideration: Seventeen thousand five hundred Dollars.

Whereas in and by a certain Ordinance of the said City of San Francisco, entitled "Ordinance No. 481: To provide for the sale of certain city property," approved December 5th, A.D. 1853. And whereas the Mayor and Joint Committee on Land Claims of said city did, in pursuance of said Ordinance, on the 26th day of December, 1853, sell at public auction the land and premises particularly mentioned and described in the first section of said Ordinance, having first given ten days' notice of the time and place of such sale, by advertisement in three of the daily papers published in the said city, at which sale the premises hereinafter mentioned and described were struck off to them, the said party of the second part, for the sum of $17,500, that being the highest and best bid therefor: And whereas the said party of the second part have made due payment

of the amount so bid by them for the said premises, pursuant to the terms of the said Ordinance ; Now therefore this Indenture Witnesseth, that the said party of the first part in consideration of the premises and of the sum of seventeen thousand five hundred dollars, the receipt whereof is hereby acknowledged, etc., doth bargain, sell, and convey unto the said party of the second part, their heirs and assigns forever, all the right, title, interest, estate, claim, and demand, both at law and in equity, as well in possession as in expectancy, of the said City of San Francisco, of, in, and to all that certain lot, piece or parcel of land, situate, lying, and being in the said City of San Francisco, and bounded and described as follows: COMMENCING 527 feet and 4 inches east of the northeast corner of Drumm and Sacramento streets, and on the north line of Sacramento street; thence at right angles northerly 59 feet 9 inches; thence at right angles with the last mentioned line to the western line of East street; thence southeasterly along said westerly line of East street to its intersection with the northerly line of Market street; thence in a southwesterly direction along the line of Market street to Sacramento street; and thence westerly along the line of Sacramento street to the point of beginning. This conveyance is made without any covenanty or warrant express or implied on the part of the said party of the first part.

In witness whereof the said party of the first part hath hereunto caused their corporate seal

to be affixed, and these presents to be subscribed by their Mayor.

[SEAL] C. K. GARRISON,
Mayor of the City of San Francisco.

Acknowledged, September 12th, 1854, by C. K. Garrison, Mayor of the said city, before
A. A. SELOVER, Notary Public.

Recorded September 13th, 1854. Liber 47 of Deeds, page 60.

GEO. T. MARYE AND J. CALEB SMITH
TO
WM. SMITH, of the State of Virginia.

DEED.

Dated September 20, 1854. *Consideration*, $30,000.

Do grant, bargain, sell, alien, remise, release, convey and confirm unto the party of the second part, and to his heirs and assigns forever, all that certain parcel of land covered by water, situated in the said city of San Francisco, bounded and described, as follows: [Same description as in deed, city of San Francisco to George T. Marye and J. Caleb Smith, Liber 47 of Deeds, page 60, herein-before given on page 1 of this abstract.]

Covenant of warranty against grantors and against all and every person and persons lawfully claiming or to claim the same.

Witness: WM. L. HIGGINS.

Acknowledged September 20, 1854, before
WM. L. HIGGINS, Notary Public.

Recorded March 14, 1855. Liber 51 of Deeds, page 367.

WILLIAM SMITH, OF FAUQUIER COUNTY, STATE OF VIRGINIA, BY HIS ATTORNEY IN FACT, AUSTIN E. SMITH, TO GEORGE J. WHEELAN.

DEED.

Dated July 10, 1856. *Consideration*, $30,000.

Does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain parcel of land covered with water, and being in the city of San Francisco, and described as follows: [Same description as in deed, city of San Francisco to George T. Marye and J. Caleb Smith. Liber 47 of Deeds, page 60, herein-before given on page 1 of this abstract.] And the said William Smith hereby covenants, &c., that he is lawfully seized in fee simple, absolute of the above premises, and that the said Smith has a perfect right, in law, to sell and convey the same; further covenants, that he, his heirs, &c., will forever warrant and defend the said property and premises to said grantee, his heirs, &c., against the claims or demands of any and all persons whatever, both as to the present as well as any increase value thereof.

(Signed) W. SMITH.

By AUSTIN E. SMITH, Att'y in Fact.

Witness: W. F. SWASEY.

[No seal to signature of grantor. Refers to hand and seal.]

Acknowledged July 10, 1856, before

W. F. SWASEY, N. P.

Recorded July 11, 1856. Liber 60 of Deeds, page 502.

GEORGE J. WHEELAN, OF THE CITY AND COUNTY OF SAN FRANCISCO, TO WILLIAM SMITH, OF THE COUNTY OF FAUQUIER, STATE OF VIRGINIA.

DEED.

Dated September 14th 1857. *Consideration One Dollar.*

Doth remise, release, and quit claim unto the said party, of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to the tracts or parcels of land lying and being in the said city and county, and decribed as follows: [Same description as in deed, City of San Francisco, to George T. Marye and J. Caleb Smith, Liber 47 of Deeds, page 60, hereinbefore given on page 1 of this abstract.]

Witness: P. K. WOODSIDE.

Acknowledged September 29th, 1857, before Preston K. Woodside, N. P.

Recorded September 29th, 1857, Liber 71 of Deeds, page 401.

WILLIAM SMITH, BY PERRIN L. SOLOMON, AS UNITED STATES MARSHAL, FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO SAMUEL H. BROOKS, OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA.

DEED.

Dated June 24th, 1858. *Consideration*, $5,405.

Whereas, by virtue of an execution issued out

of and made under the seal of the Circuit Court of the United States for the District of California, in and for the Northern District, in favor of Dennis J. Oliver, assignee of Daniel C. McGynn, and against William Smith, attested the 8th day of October, 1857. and to the said United States Marshal directed and delivered, commanding him that of the goods and chattels of the said William Smith, in the Northern District of California, he should cause to be made certain moneys in the said writ specified, and if sufficient goods of the last named person could not be found, that then he should cause the amount of the said judgment to be made of the land, etc., whereof the last named person was seized. And whereas, because sufficient goods and chattels of of the last named person in the said writ could not be found, whereof he the said United States Marshal could cause to be made the moneys specified in said writ, he, the said United States Marshal did. in obedience to the said command, levy on, take, and seize, all the estate. right, title, and interest of the said last named person of, in, and to the real estate, etc., hereinafter, particularly set forth and described, with the appurtenances ; and did on the 31st day of October, 1857, sell all the right, title, and interest of the last named person in and to the said premises, at public vendue, at the doors of the United States Court building, in the City of San Francisco, between the hours of 9 in the morning and 5 in the afternoon of that day, he having

first given notice of the time and place of such sale, according to law, at which sale the right, title, and interest of the last named person in and to the said premises were struck off and sold in eleven separate and distinct parcels to Dennis J. Oliver for the sum of $5,405 ; he the said Dennis J. Oliver being the highest bidder, and being the highest sum bidden for the same.

Whereupon, the said United States Marshal, after receiving from the said purchaser, the said sum of money so bidden as aforesaid, gave him such certificate as is by law directed to be given; and a certificate of such sale was duly filed in the office of the Recorder, etc. And whereas, the sixth month after such sale thereof have expired without any redemption of the said premises having been made. And whereas, the said purchaser Dennis J. Oliver, did on March 30th, 1858, bargain, transfer, sell, and convey, all his right, title, interest, and estate in and to the lands, tenements, real estate, and premises hereinafter set forth and described, to Samuel H. Brooks, for a valuable consideration; and did authorize the said United States Marshal to make a proper deed to said Samuel H. Brooks for said premises: Witnesseth, etc., do grant, bargain, sell, convey, and confirm unto the said Samuel H. Brooks, his heirs, and assigns, all the estate, right, title, and interest of the said person, against whom the said writ of execution has been issued as aforesaid, of, in and to all the following

described property, all being situated in the City of San Francisco, to wit:

Also, that certain lot of land [same description as in deed, City of San Francisco, to George T. Marye and J. Caleb Smith, Liber 47 of Deeds, page 60, hereinbefore given on page 1 of this abstract.]

Witness: E. V. JOICE.

Acknowledged June 25th, 1858, before
E. V. JOICE, N. P.

Recorded June 30th, 1858, Liber 78 of Deeds, page 318.

THE GOVERNOR OF THE STATE OF CALIFORNIA, THE SECRETARY OF STATE, AND THE CONTROLLER OF STATE OF THE STATE OF CALIFORNIA, A BOARD, ETC., TO WILLIAM SMITH.

DEED.

Dated November 7th, 1855. *Consideration*, $50.

Do grant, bargain, sell and quitclaim unto the said party of the second part, and to his heirs and assigns forever, "all the right, title and interest of the State of California" in the following described parcel of land, situated within the City of San Francisco, County of San Francisco, and State of California, known and described as follows, to wit: Commencing on the north line of Sacramento street 48 feet 4 inches west of East street; thence west along Sacramento street 24 feet four inches; thence at right angles east 24

feet four inches; thence at right angles south 59 feet 9 inches to place of beginning, being Lot numbered 121 of City Slip Property, as per plan on record in the County Recorder's office of the County of San Francisco.

(Signed:) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHARLES H. HEMPSTEAD, [SEAL.]
Secretary of State of the State of California.
SAM BELL, [SEAL.]
Controller of State of the State of California.

Acknowledged November 7th, 1855, before A. A. SELOVER, Notary Public.

Recorded September 9th, 1858, Liber 81 of Deeds, page 347.

THE GOVERNOR OF THE STATE OF CALIFORNIA, THE SECRERARY OF STATE, AND THE COMPTROLLER OF THE STATE OF CALIFORNIA, A BOARD, ETC., TO WILLIAM SMITH.

DEED.

Dated November 7th, 1855. *Consideration*, $50.

Do grant, bargain, sell, and quitclaim unto the said party of the second part, and to his heirs and assigns forever, "all the right, title, and interest of the State of California" in the following described parcel of land, situated within the City of San Francisco, County of San Francisco, State of California, known and described as follows, to wit: commencing at the point of inter-

section of the north line of Sacramento street with the westerly line of East street; thence westerly along Sacramento street 48 feet 4 inches; thence at right angles northerly 59 feet 9 inches to East street; thence southerly along East street 73 feet 6 inches to the place of beginning; being Lot Number 122 (triangular) of the "City Slip" Property, as per plan of the same on record in the County Recorder's office of San Francisco.

(Signed:) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHAS. H. HEMPSTEAD. [SEAL.]
Secretary of State of the State of California.
SAM BELL, [SEAL.]
Comptroller of the State of California.

Acknowledged November 7th, 1855, before A. A. SELOVER, Notary Public.

Recorded September 9th. 1855. Liber 81 of Deeds, page 344.

SAMUEL H. BROOKS, OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, TO AUSTIN E. SMITH.

DEED.

Dated September 9th, 1858. *Consideration* $13,000.

Does grant, bargain, sell, remise, convey and quit claim, unto the said party of the second part and to his heirs and assigns forever, all the right, title and interest of the said party of the first part in and to that certain parcel of land

now covered with water, and being in the city of San Francisco, and described as follows:

[Same description as in deed City of San Francisco to George T. Marye and J. Caleb Smith, Liber 47 of Deeds, page 60, hereinbefore given on page 1 of this abstract.] Being subdivision designated as Numbers 121 and 122 on Gardiner's map of the city slip property, in the office of the Recorder of the County of San Francisco, in Liber 1 of Maps, page 6.

Witness, Sam'l Hermann.

Acknowledged September 9th, 1858, before
SAM'L HERMANN, N. P.

Recorded September 9th, 1858, Liber 81 of Deeds, page 353.

AUSTIN E. SMITH TO LLOYD TEVIS.

DEED.

Dated June 8th, 1861. *Consideration* $50,000.

Doth remise, release and quit claim unto the party of the second part, and to his heirs and assigns forever, all my right, title and interest, being an undivided one-half (½) in and to all that certain parcel of land described as follows: Also all that property now covered with water commencing at a point on the northerly line of Sacramento street, distant eastwardly from the northeast corner of Drumm and Sacramento streets 527 feet; thence northerly and at right angles with Sacramento street 59 feet 9 inches; thence at right angles eastwardly to the west-

erly line of East street; thence southeasterly along the westerly line of East street to Market street; thence southwesterly along the northerly line of Market street to its intersection with Sacramento street; thence along the northerly line of Sacramento street to the place of beginning; together with the small wharf east of said property and attached thereto and an appurtenance thereof.

Acknowledged July 1st, 1861, before

BLAIR LAURIE, N. P.

Recorded July 8th, 1861, Liber 135 of Deeds, page 216.

THE CITY AND COUNTY OF SAN FRANCISCO TO LLOYD TEVIS.

DEED.

Dated October 26th, 1865. *Consideration* $1.

(50c. Stamp—cl'd.)

Doth remise, release and quit claim unto the party of the second part and to his heirs and assigns forever, all of the real estate in the City and County of San Francisco, and State of California, and known, numbered and designated as City Slip Lots Nos. 121, 122. This deed being intended to convey to said Lloyd Tevis, who claims to be the successor in interest of the original grantees hereinafter named, and not otherwise, and as an executor of the trusts indicated by Act of the Legislature of the State of California, approved April 17th, 1862, entitled

"An Act to give further powers to the Board of Supervisors of the City and County of San Francisco," all the right, title and interest of the said City and County of San Francisco in and to the lots of land hereinbefore described, which said lots of land were sold to said last named parties at public sale on the 26th day of December, 1853, and for which deeds were made by the said City of San Francisco as follows: For said lots Nos. 121 and 122 to George T. Marye and J. Caleb Smith, by deed dated January 16th, 1854, and recorded September 13th, 1854, etc., in Liber 47 of Deeds, at page 60, etc.

In witness whereof, the said City and County has executed these presents, by causing its corporate seal to be hereunto affixed by Henry P. Coon, Mayor of said City and County, and the same to be signed by the said Mayor, this 31st day of October, 1865.

(Signed) HENRY P. COON, [Seal.]
Mayor of the City and County of San Francisco.

Acknowledged November 3, 1865, before
F. J. THIBAULT, N. P.

Recorded January 20, 1866. Liber 315 of Deeds, page 10.

LLOYD TEVIS TO GEORGE T. MARYE.

DEED.

Dated October 10, 1863. *Consideration*, $5. (*Fifty cents Rev. Stamp Cancelled.*)

Doth grant, bargain and sell, convey and con-

firm unto the party of the second part, and to his heirs and assigns forever, all of the real estate in the City and County of San Francisco, &c., and particularly set out and described as follows, to wit: Also the equal undivided one-half part of all that property now covered with water, commencing at a point on the northerly line of Sacramento street, distant eastwardly from the northeast corner of Drumm and Sacramento streets 527 feet; thence northerly and at right angles with Sacramento street 59 feet 9 inches; thence at right angles eastwardly to the westerly line of East street; thence southeasterly along the westerly line of East street to Market street; thence southwesterly along the northerly line of Market street, to its intersection with Sacramento street; thence along the northerly line of Sacramento street, to the place of beginning.

Together with the equal undivided one-half part of the small wharf east of said property, and attached thereto and an appurtenance thereof.

Acknowledged January 19, 1866, before

HENRY HAIGHT, N. P.

Recorded March 1, 1866. Liber 318 of Deeds, page 174.

LLOYD TEVIS TO JOSEPH EMERIC.

DEED.

Dated June 16, 1866. *Consideration*, $29,000. ($29 *Rev. Stamp Cancelled.*)

Doth grant, bargain and sell, convey and con-

firm unto the said party of the second part, and to his heirs and assigns forever, all the right, title and interest of the said party of the first part, in and to the lots or parcels of real estate situated in the City and County of San Francisco, which are particularly described, as follows: Also the equal undivided one-half part of all that property now covered with water. [Same as second description in deed, Tevis to Marye, Liber 318 of Deeds, page 174, herein before given on page 29 of this abstract.] Said premises being known and numbered as City Slip Lots Nos. 121 and 122, together with the undivided half of small wharf east of said property, attached thereto and an appurtenance thereof.

Witness: HENRY HAIGHT.

Acknowledged June 16, 1866, before

HENRY HAIGHT, N. P.

Recorded June 19, 1866. Liber 334 of Deeds, page 6.

WILLIAM SMITH, ELIZABETH H. SMITH, MARY AMELIA SMITH, THOMAS SMITH, ALL OF WARRENTON, IN THE STATE OF VIRGINIA, TO JOSEPH EMERIC, OF THE CITY AND COUNTY OF SAN FRANCISCO.

DEED.

Dated December 31*st*, 1866. *Consideration*, $5, (50 *cent Revenue Stamp cancelled.*)

Do hereby grant, bargain, sell and convey unto

the party of the second part, and to his heirs and assigns forever. All the right, title and interest which they, the said parties of the first part, may have in their own right and as heirs of J. Caleb Smith and Austin E. Smith, or of either of them, in and to all the following described lots of land situate in the City and County of San Francisco, in the State of California: All the equal undivided one-half part of all that property in said city and county, now covered by water, (same as second description in deed Tevis to Marye, Liber 318 of deeds, page 174, hereinbefore given on page 29 of this abstract) said premises being known and numbered as City Slip Lots Nos. 121 and 122; together with the undivided one-half of the small wharf east of said property and attached thereto, and an appurtenance thereof.

Acknowledged January 7th, 1867, before

WM. A. JENNINGS,

Clerk of the County Court of Fauquier Co., State of Virginia.

Recorded March 12th, 1867. Liber 355 of Deeds, page 390.

JOSEPH EMERIC
TO
GEORGE T. MARYE.

DEED.

Dated April 20th, 1867. *Consideration*, $6,000, ($6 *revenue stamp cancelled.*)

Does grant, bargain and sell, convey and con-

firm unto the party of the second part and to his heirs and assigns forever: All the undivided one-half part of all that certain parcel of land situated in said City and County of San Francisco, described as follows: (same as second description in deed Tevis to Marye, Liber 318 of Deeds, page 174, hereinbefore given on page 29 of this abstract,) being City Slip Lots Nos. 121 and 122, together with the undivided one-half of a small wharf east of said property attached thereto and an appurtenance thereof.

Witness—SAMUEL HERMANN.

Acknowledged April 25th, 1867, before SAMUEL HERMANN, N. P.

Recorded April 25th, 1867. Liber 369 of Deeds, page 108.

GEORGE T. MARYE & JOSEPH FRANK

TO

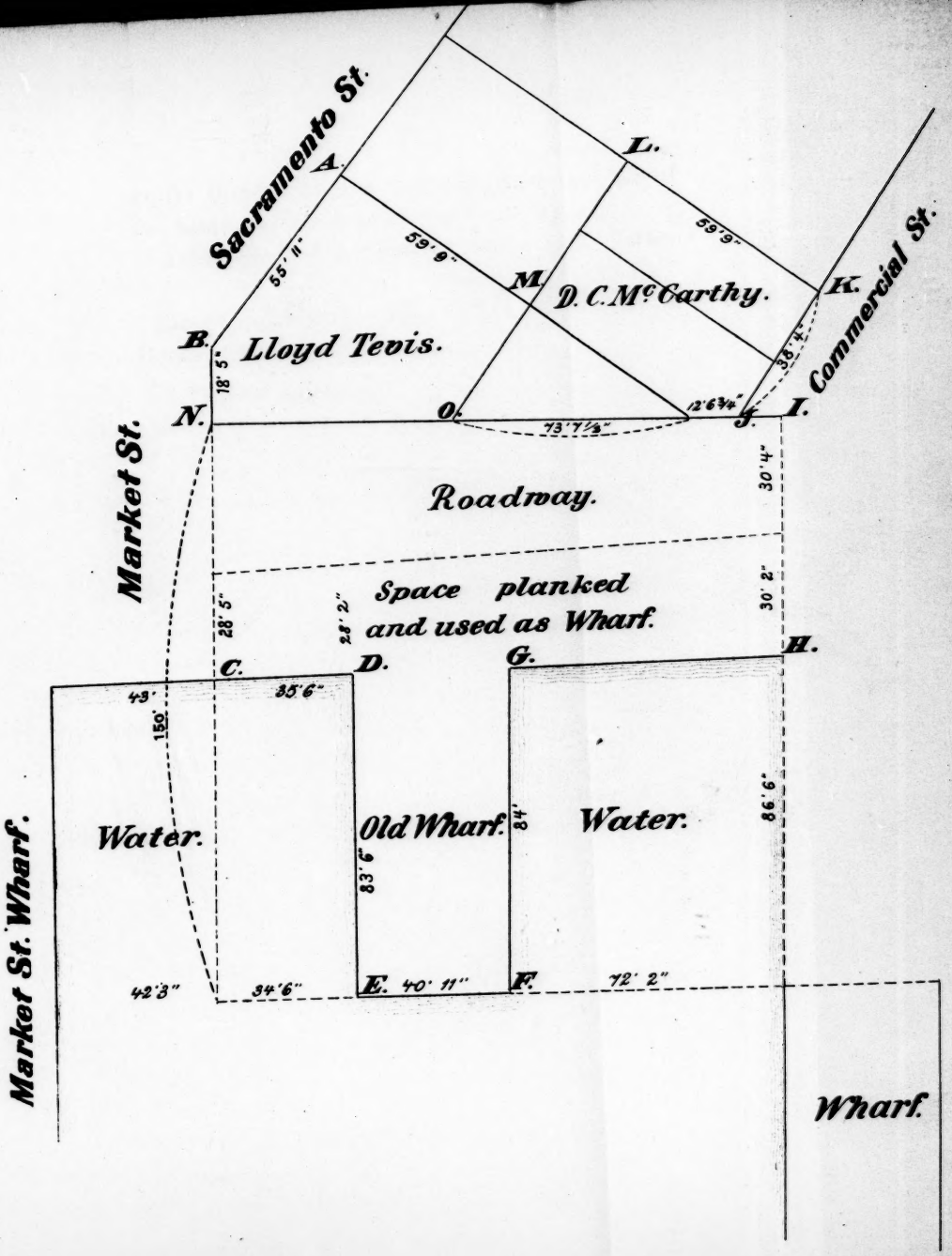
ADOLPH C. WEBER.

DEED.

Dated September 30th, 1867. *Consideration*, $50,000. ($50 *revenue stamp cancelled.*)

Do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and asssigns forever: All that certain parcel of land, and land and water, situate in the City and County of San Francisco, State of California, bounded and described as follows, to wit: Commencing at a point on the northerly line of Sacramento street in said city and county marked

"A" in a diagram hereto annexed; thence running easterly along said line 55 feet 11 inches to a point marked "B" on said diagram; thence easterly to a point marked "C" on said diagram; thence at right angles northerly to a point marked "D" on said diagram; thence easterly at right angles to a point marked "E" on said diagram; thence northerly to a point marked "F" on said diagram; thence westerly to a point marked "G" on said diagram; thence northerly to a point marked "H" on said diagram; thence westerly to a point marked "I" on said diagram; thence southerly to a point marked "J" on said diagram; thence along Commercial street to a point marked "K' on said diagram; thence at right angles to a point marked "K" on said diagram; thence at right angles to a point marked "L" on said diagram; thence at right angles to a point marked "M" on said diagram; and thence at right angles to point "A" and place of beginning. Parties of the first part hereby sell, transfer and assign, grant, convey, and make over, unto the said party of the second part, his heirs, representatives and assigns forever. All causes of action and claims for damages which they or either of them have, or which has accrued to them or either of them by reason of the unlawful occupation or detention of said premises, or any portion thereof, by any person or persons whomsoever, or by reason of obstructions having been placed in front of said premises, so as to prevent the approach and access of vessels and water


Sacramento St.
A.
L.
55' 11"
59' 9"
59' 9"
M.
D. C. McCarthy.
K.
Commercial St.
B.
Lloyd Tevis.
18' 5"
38' 4"
N.
O.
12' 6¾"
J.
I.
73' 7½"
Market St.
Roadway.
30' 4"
Space planked
and used as Wharf.
28' 5"
28' 2"
30' 2"
C.
D.
G.
H.
43'
35' 6"
150'
Water.
Old Wharf.
84'
Water.
86' 6"
83' 6"
Market St. Wharf.
42' 3"
34' 6"
E. 40' 11"
F.
72' 2"
Wharf.

crafts thereto, and so as to prevent the use of the same and portions thereof as a wharf.

Acknowledged September 30th, 1867, before

JOHN WHITE, N. P.

Recorded March 17th, 1869. Liber 487 of Deeds, page 271.

[Insert diagram.]

THE GOVERNOR OF THE STATE OF CALIFORNIA, THE SECRETARY OF STATE, AND THE CONTROLLER OF STATE, ETC., TO JAMES GRANT AND DAVID C. MCCARTHY.

DEED.

Dated November 7th, 1855. *Consideration*, $50.

Do grant, bargain, sell, and quitclaim unto the said party of the second part, and to their heirs and assigns forever, "all the right, title, and interest of the State of California in the following described parcel of land, lying and being within the City of San Francisco, etc., known and described as follows, to wit: commencing at the point of intersection of the southern line of Central Wharf with the western line of East street; thence southerly at right angles to Central Wharf 59 feet 9 inches; thence at right angles easterly 48 feet 4 inches to East street; thence northerly along East street 73 feet 6 inches to the place of beginning, being the triangular Lot No. 119 of the City Slip" Property, as per plan of the same on record in the County Recorder's office of the County of San Francisco.

(Signed:) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHAS. H. HEMPSTEAD, [SEAL.]
Secretary of State of the State of California.
SAM. BELL, [SEAL.]
Controller of State of the State of California.

Acknowledged November 7th, 1855, before
A. A. SELOVER, Notary Public.

Recorded November 14th, 1855, Liber 57 of Deeds, page 54.

THE GOVERNOR OF THE STATE OF CALIFORNIA, THE SECRETARY OF STATE AND THE CONTROLLER OF STATE, ETC., TO JAMES GRANT AND DAVID C. MCCARTHY.

DEED.

Dated November 7th, 1855. *Consideration*, $50.

Do grant, bargain, sell, and quitclaim unto the said party of the second part, and to their heirs and assigns forever, "all the right, title and interest of the State of California" in the following described parcel of land, situated within the City of San Francisco, etc., known and described as follows, to wit: commencing at the point of intersection of the southerly line of Central Wharf with the westerly line of East street; thence westerly along Central Wharf 21 feet 8 inches; thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 21 feet 8 inches; thence at right angles northerly 59 feet 9 inches to the place of beginning; being Lot No. 118 of "City Slip" Property, as per plan of the same on record in the County Recorder's office of the County of San Francisco.

(Signed:) JOHN BIGLER, [SEAL.]
Governor of the State of California.
CHAS. H. HEMPSTEAD, [SEAL.]
Secretary of State of the State of California.
SAM. BELL, [SEAL.]
Controller of State of the State of California.

Acknowledged November 7th, 1855, before
A. A. SELOVER, Notary Public.
Recorded November 14th, 1855, Liber 57 of Deeds, page 58.

THE GOVERNOR OF THE STATE OF CALIFORNIA, THE SECRETARY OF STATE AND THE CONTROLER OF STATE OF CALIFORNIA, A. BOARD, ETC., TO GEORGE H. FAULKNER.

DEED.

Dated November 7th, 1855. *Consideration*, $50.

Do grant, bargain, sell, and quitclaim unto the party of the second part, and to his heirs and assigns forever. "All the right, title, and interest of the State of California, in the following described parcel of land, situated within the City of San Francisco, known and described as follows, to wit: Commencing on the south line of Central Wharf 21 feet 8 inches west of East street; thence westerly along Central Wharf 24 feet 4 inches; thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 24 feet 4 inches; thence at right angles northerly 59 feet 9 inches to the place of beginning, being "City Slip," Lot No. 115, as per plan of the same on record in the County Recorder's, County of San Francisco.

(Signed:) JOHN BIGLER, [SEAL.]
Governor of the State of California,
CHARLES H. HEMPSTEAD, [SEAL.]
Secretary of State of the State of California,
SAM. BELL, [SEAL.]
Controler of State of the State of California.

Acknowledged November 7th, 1855, before
A. A. SELOVER, N. P.
Recorded February 16th, 1856, Liber 59 of Deeds, page 422.

GEORGE H. FAULKNER TO SIMON L. JONES.

DEED.

Dated February 18th, 1856. *Consideration*, $2,000.

Does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all and singular, the following described parcels of land situated in the City of San Francisco and State of California, and bounded and described as follows, to wit: Commencing on the north line of Sacramento street 142 feet 8 inches west from East street; thence west along Sacramento street 24 feet; thence at right angles southerly 59 feet 9 inches to the place of beginning; being lots numbered 113 of the City Slip property, as per plan above described. Also, commencing on the south line of Central Wharf 46 feet west of East street; thence west along Central Wharf 24 feet; thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 24 feet; thence at right angles northerly 59 feet 9 inches to the place of beginning, being City Slip Lot No. 114, as per plan above described. Also, commencing on the south line of Central Wharf 21 feet 8 inches west of East street; thence westerly along Central Wharf 24

feet 4 inches; thence at right angles southerly 59 feet 9 inches; thence at right angles easterly 24 feet 4 inches; thence at right angles northerly 59 feet 9 inches to place of beginning, being City Slip Lot No. 115, as per plan above described [and other property.]

Acknowledged February 18th, 1866, before
H. A. COBB, N. P.

Recorded February 19th, 1856, Liber 60 of Deeds, page 27.

SIMON L. JONES TO JOHN MUGAN.

DEED.

Dated June 8th, 1858. *Consideration*, $1,000.

Does remise, release and quitclaim unto the party of the second part and to his heirs and assigns forever, all his right, title and interest in and to all those certain "Water Lots" or pieces of land which were formerly or are now covered with water and familiarly known as "City Slip Lots," and particularly designated on a map or plan thereof made by James J. Gardiner, Surveyor, in the month of December, A.D. 1853, as lots Numbers 113, 114 and 115, said map or plan being on record in the office of the City and County Recorder of the City and County of San Francisco in Map Book No. 1, on page 6, and is hereby specially referred to and made part hereof.

Acknowledged June 8th, 1858, before
H. A. COBB, N. P.

Recorded June 19th, 1858, Liber 78 of Deeds, page 179.

JOHN MUGAN TO P. C. HYMAN.

DEED.

Dated June 19th, 1858. *Consideration* $525.

Doth remise, release and quitclaim unto the party of the second part and to his heirs and assigns forever, all his right, title and interest in and to those certain water lots (in number seven) situated in said City of San Francisco, and generally known as "City Slip Lots" Nos. 113, 114 and 115, as numbered and laid down in a map or plan of said lots surveyed and made by James J. Gardiner, County Surveyor, in December, A.D. 1853, which map or plan is recorded in the office of the County Recorder, etc., in Map Book No. 1, page 6.

(Signed) JOHN MUGAN. [SEAL.]

By his attorney in fact,

R. H. SINTON. [SEAL.]

Acknowledged June 19th, 1858, before

H. A. COBB, N. P.

Recorded June 19th, 1858, Liber 78 of Deeds, page 215.

THE CITY AND COUNTY OF SAN FRANCISCO TO JAMES GRANT AND D. C. MCCARTHY.

DEED.

Dated March 22d, 1859. *Consideration* $19,000.

Doth bargain, sell and convey unto the parties

of the second part, their heirs and assigns forever, all the right, title, interest, estate, claim and demand, both at law and in equity, as well in possession as in expectancy, of the said City and County of San Francisco of, in and to, all that certain parcel of land situate in the City and County of San Francisco, and bounded and described as follows: 73 feet 6 inches front on East street; 48 feet 4 inches on the south and 59 feet 9 inches on the west, being triangular lot Number 119 as per plan of the aforesaid property on record in the County Recorder's office of the City and County of San Francisco. This conveyance is made without any covenant or warranty, express or implied, on the part of said party of the first part.

In witness whereof, the said party of the first part hath hereunto caused the corporate seal to be affixed and these presents to be subscribed by the Treasurer of the City and County of San Francisco.

WM. H. TILLINGHAST, [SEAL.]
Treasurer of City and County of San Francisco.

Acknowledged March 22d, 1859, before
C. J. BRENHAM, N. P.

Recorded March 22d, 1859, Liber 91 of Deeds, page 168.

PRESLEY C. HYMEN TO JACOB S. COHEN.
DEED.

Dated July 18th, 1860. *Consideration* $750.

Doth remise, release and quitclaim unto the

party of the second part, and to his heirs and assigns forever, all his right, title and interest in and to the following parcels of land situate in the city of San Francisco, and described as follows: [City Slip Lots 113, 114 and 115, as described in deed, Faulkner to Jones, Liber 60 of Deeds, page 27, hereintofore given on page 47 of this abstract; also remises, &c., City Slip Lots 63 and 64, 65 and 66.]

Acknowledged July 25, 1860, before

E. P. PECKHAM, N. P.

Recorded January 10, 1861. Liber 122 of Deeds, page 100.

THE CITY AND COUNTY OF SAN FRANCISCO BY H. P. COON, MAYOR, TO MARY E. GRANT, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF JAMES GRANT, DECEASED.

DEED.

Dated May 14, 1864. *Consideration*, $9,500. ($10 *Rev. Stamp Cancelled.*)

Heretofore paid to said City and County in cash and scrip of the former city of San Francisco, &c., in pursuance of an Act entitled an Act to authorize the Treasurer of the City and County of San Francisco to execute certain deeds, and cancel certain claims, approved April 26th, 1858, &c.

Doth remise, release and quitclaim unto the

party of the second part, and to his heirs and assigns forever, one undivided half of all that parcel of land situate in the city of San Francisco, and described as follows, viz: Commencing at the southwest corner of Central wharf or Commercial and East streets; thence running along the line of East street, southeasterly 73 feet 6 inches; thence westerly and parallel with Sacramento street 48 feet 4 inches; thence at right angles northerly and parallel with Drumm street 59 feet 9 inches, to Central wharf or Commercial street, being a triangular lot known and numbered 119, on the map of property known as City Slip property. and recorded in the office of the County Recorder of the City and County of San Francisco, in Liber 1 of Maps, page 6. This conveyance is made by virtue of an Act of the Legislature of the State of California, entitled An Act to give further powers to the Board of Supervisors of the City and County of San Francisco, approved April 17, 1862, and by virtue of an Ordinance of the people of the City and County of San Francisco, passed by the Board of Supervisors of said City and County, February 8, 1864, and approved by the Mayor of said City and County, February 9, 1864, which said ordinance is numbered "Order 569;" to have and to hold, &c., unto second party, her heirs and assigns forever, without warranty or recourse against first party for any cause whatsoever in

trust for the estate of Samuel Grant, deceased, in the due and lawful administration and distribution thereof.

Witness: OTIS V. SAWYER.

Acknowledged May 27, 1864, before

OTIS V. SAWYER, N. P.

Recorded May 30, 1864. Liber 245 of Deeds, page 204.

THE CITY AND COUNTY OF SAN FRANCISCO, BY H. P. COON, MAYOR, TO D. C. MCCARTHY.

DEED.

Dated May 25, 1864. *Consideration*, $9,500.

($10 *Rev. Stamp Cancelled.*)

Heretofore paid City and County in cash and scrip of the former city of San Francisco, &c.

Doth remise, release and quitclaim unto the party of the second part. and to his heirs and assigns forever, one undivided half of all that parcel of land situate in the city of San Francisco, and described as follows [Same description as in deed, The City and County of San Francisco to Mary E. Grant, Liber 245 of Deeds, page 204, hereintofore given on page 59 of this abstract]: being a triangular lot known and numbered 119 in the map of property known as the City Slip property, &c. To have and to hold, &c., without warranty or recourse against first party for any cause whatever.

Witness: OTIS V. SAWYER.

Acknowledged May 27, 1864, before
OTIS V. SAWYER, N. P.
Recorded May 30, 1864, Liber 284 of Deeds, page 177.

THE CITY AND COUNTY OF SAN FRANCISCO TO DAVID C. MCCARTHY.

DEED.

Dated August 11th, 1866. *Consideration*, $2,225 ($2 50 *Revenve Stamp, cancelled*), *gold coin of the United States.*

Doth grant, bargain and sell, convey and confirm unto the party of the second part, and to his heirs and assigns forever, all those certain parcels of land situate in the City and County of San Francisco, and bounded as follows, to wit: (same description as in deeds David C. McCarthy to Theodore Le Roy, Liber 338 of Deeds, page 377, hereinafter given on page 65 of this abstract,) being City Slip Lots 115 and 116. The covenants herein contained or implied by law from the contents hereof are not to be taken as covenants against the existance of liens or incumbrances, but only as covenants against any loss or damage to the purchaser, his heirs or assigns, by reason of the existence and assertion of such liens and incumbrances. And this conveyance being the act of said City and County of San Francisco, all claims in the premises or that may hereafter arise under

or by reason of the execution of this deed shall be exclusively against the said City and County of San Francisco, and in no event against the agents of said city and county, by whom these presents are executed.

(Signed:) HENRY P. COON, [SEAL.]
Mayor of the City and County of San Francisco.

Witness: SAM'L HERMANN.

Acknowledged August 11th, 1866, before SAM'L HERMANN, N. P.

Recorded September 22d, 1866, Liber 338 of Deeds, page 335.

DAVID C. McCARTHY TO THEODORE LE ROY.

DEED.

Dated September 29th, 1866. *Consideration*, $6,000.
($6 *Revenue Stamp, cancelled.*)

Does grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to those certain parcels of land situated in the City and County of San Francisco, and bounded and described as follows: First—Commencing at a point on the southerly line of Commercial street, distant 457 feet and 4 inches easterly from the southeasterly corner of Drum and Commercial streets; running thence easterly along said southerly line of Commercial

street 24 feet and four inches; thence at right angles southerly 59 feet and 9 inches; thence at right angles westerly and parallel with Commercial street 24 feet and 4 inches; and thence at right angles northerly 59 feet and 9 inches to the southerly line of Commercial street and the point of commencement, being Lot known and numbered as 115 on the map of property known as "City Slip Property," said map being the one made by J. J. Gardnier, City and County Surveyor, in the month of December, 1863, and recordèd, etc., in Liber 1 of Maps, page 6. Second—Commencing at a point on the northerly line of Sacramento street distant 456 feet and 8 inches easterly from the northeasterly corner of Drum and Sacramento streets; running thence easterly along said northerly line of Sacramento street 24 feet; thence at right angles northerly 59 feet and 9 inches; thence at right angles westerly and parallel with Sacramento street 24 feet; and thence at right angles southerly 59 feet and 9 nine inches to said northerly line of Sacramento street and the point of commencement, being Lot known and numbered as 116 on said official map as aforesaid.

Witness: SAMUEL HERMANN.

Acknowledged September 29th, 1866, before SAMUEL HERMANN, N. P.

Recorded September 29th, 1866, Liber 338 of Deeds, page 377.

THE CITY AND COUNTY OF SAN FRANCISCO TO DAVID C. McCARTHY.

DEED.

Dated August 11th, 1866. *Consideration*, $875.00 ($1.00 *revenue stamp cancelled*) *gold coin of the United States.*

Doth grant, bargain and sell, convey and confirm, unto the party of the second part, and to his heirs and assigns, forever. All that certain parcel of land situate in the City and County of San Francisco and bounded and described as follows, to wit: Commencing at a point on the southerly line of Commercial street, distant 481 feet 8 inches easterly from the southeasterly corner of Drumm and Commercial streets; running thence easterly along said southerly line of Commercial street 21 feet and 8 inches; thence at right angles southerly 59 feet and 9 inches; thence at right angles westerly and parallel with Commercial street 21 feet and 8 inches; and thence at right angles northerly 59 feet and 9 inches to the southerly line of Commercial street and the point of commencement. Being the lot known and numbered 118 on the map of property known as City Slip Property, &c.

(Signed) HENRY P. COON,
Mayor of the City and County of San Francisco.

Acknowledged August 11th, 1866, before
SAMUEL HERMANN, N. P.

Recorded September 22nd, 1866. Liber 340 of Deeds, page 187.

JACOB S. COHEN to D. C. McCARTHY.

DEED.

Dated September 27th, 1866. *Consideration*, $300.
(50 *cent revenue stamp cancelled.*)

Does grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, All his right, title, and interest in and to the following parcel of land situated in the City and County of San Francisco, and known, laid down, and described on the official map of the City and County of San Francisco as "City Slip Lot, Number 115," which lot has a frontage of 24 feet and 4 inches on Commercial street by a uniform depth of 59 feet and 9 inches.

Acknowledged September 29th, 1866, before
JOHN WHITE, N. P.

Recorded September 29th, 1866. Liber 340 of Deeds, page 218.

DAVID C. McCARTHY to MARY E. BURCKES.

DEED.

Dated October 9th, 1866. *Consideration* $500.
(50 *cent Revenue Stamp cancelled.*)

Doth grant, bargain and sell unto the said

party of the second part, and to his heirs and assigns forever, all his right, title and interest in and to one undivided one-half interest in and to City Slip Lot Numbered 118.

Witness:—T. A. LYNCH.

Acknowledged October 9th 1866, before

T. A. LYNCH, N. P.

Recorded, October 9th, 1866. Liber 342 of Deeds, page 187.

DAVID C. McCARTHY, SAMUEL S. BURCKES AND HIS WIFE, MARY E. BURCKES (WIDOW OF THE LATE JAMES GRANT), TO JOSEPH FRANK.

DEED.

Dated June 10th, 1867. *Consideration* $25,000. ($25 *Rev. Stamp cancelled.*)

Do grant, bargain and sell, convey and confirm unto the party of the second part, and to his heirs and assigns forever, all that certain parcel of land situate in the City and County of San Francisco, known and particularly described as follows: Commencing at a point on the south line of Commercial street (formerly Central Wharf), distant 481 feet and 4 inches easterly from the southeasterly corner of Drumm and Commercial streets, and running thence easterly along said southerly line of Commercial street, 38 feet and 4 inches to the southwesterly corner of Commercial and East streets; thence southeasterly along the westerly line of East street, 73 feet and 7½ inches; thence westerly and par-

allel with Sacramento street, 81 feet 4¼ inches; thence at right angles northerly and parallel with Drumm street, 59 feet and 9 inches to the southerly line of Commercial street, at the point of commencement. Same being known and designated on the Map of the City and County of San Francisco as "City Slip" Lots Nos. 118 and 119, together with a certain wharf and the superstructures thereon, situate in front and along the front of the above and foregoing property on East street, and all the privileges and franchises therewith connected, and rents, profits and advantages arising therefrom; also, all the surplus property lying in said City Slip Lots Nos. 118 and 119, and between said lots Nos. 118 and 119.

Witness: F. J. THIBAULT.

Acknowledged June 10th, 1867, before

F. J. THIBAULT, N. P.

Recorded June 11th, 1867. Liber 367 of Deeds, page 167.

[Insert map.]

United States Circuit Court, Ninth Circuit, State of California.

ADOLPH C. WEBER
vs.
THE BOARD OF STATE HARBOR COMMISSIONERS.

Stipulated that the foregoing abstract of the record of conveyances be attached to and inserted as part of the Transcript on Appeal in the above entitled cause, and that the same are the various conveyances given in evidence on the trial of the cause, and referred to in the minutes of evidence taken down by the presiding Judge.

WM. H. PATTERSON,
Solicitor for Complainant.

THOMAS P. RYAN,
Solicitor for Defendants.

In the United States Circuit Court for the District of California.

A. C. WEBER
vs.
THE BOARD OF STATE HARBOR COMMISSIONERS.

DECREE.

This cause having been heretofore tried, and submitted to the Court, and the Court having duly considered the same, and being fully advised therein,

It is ordered and adjudged that the said com-

plainant take nothing by his said action, and that the bill of the said complainant be, and the same is hereby dismissed.

It is further ordered and decreed, that defendants recover of complainant their costs of suit.

MATTHEW P. DEADY,
Judge.

ENDORSED:

Filed and entered this 3d January, 1871, as of 11th December, 1869, by order of Court.

L. S. B. SAWYER,
Clerk.

ORDINANCE NO. 481—TO PROVIDE FOR THE SALE OF CERTAIN CITY PROPERTY.

The People of the City of San Francisco do ordain as follows:

SECTION 1. That the Mayor and Joint Committee on Land Claims of the City of San Francisco are hereby authorized and required to sell at public auction, after not less than ten days' advertisement in three of the daily papers, to the highest bidder, at such time and place as they may think advisable, all those pieces and parcels of land and water situated in the City of San Francisco, and described as follows, viz:

First piece or parcel, bounded on the north by Clay street, on the south by Central Wharf, on the east by the west line of Drumm street, and on the west by Davis street. Second piece or parcel, bounded on the north by Central Wharf, on the south by Sacramento street, on the east by the west line of East street, and on the west by the east line of Drumm street. Fourth piece or parcel, bounded on the north by Central Wharf, on the south by Sacramento street, on the west by the east line of Drumm street, and on the east by the west line of East street, which east and west line of East street shall be continued westwardly and northerly, in its present direction, to its junction with the south line of Clay street.

SEC. 2. Said pieces of land and water shall be surveyed under the supervision, and as the Mayor

and Joint Committee on Land Claims may direct.

SEC. 3. Twenty-five per cent. of the net proceeds of said sale shall be paid on the day of sale, in cash, or State indebtedness receivable for public dues by the State, which amount shall be paid to the State of California pursuant to the Act of the Legislature, approved twenty-sixth day of March, 1850. Fifty per cent. to be paid in sixty days thereafter, in cash, or city warrants that may have been issued on or after May 1, 1851; and the balance of twenty-five per cent., payable in four months from date of sale, in cash, or three per cent. city scrip issued prior to May 1, 1851, and which may have not been funded, as provided by an Act of the Legislature of this State, authorizing the funding of the floating debt of the City of San Francisco, and to provide for the payment of the same.

SEC. 4. The Mayor shall execute, on behalf of the city, a bond to each purchaser at the time of first payment, that when the whole of the purchase money is paid, the city shall give to the purchaser a deed for the whole lot or lots purchased. And on the payment of the last instalment, then the Mayor shall execute a deed to the party lawfully entitled to the same under sale.

SEC. 5. That the eighth section, title four, chapter four, of an Ordinance to revise, codify, and amend the general Ordinances of the City of San Francisco, approved November 4, 1852,

and all other Ordinances or parts of Ordinances conflicting with this Ordinance, be and the same are hereby repealed.

FRANK TURK,
President of Board of Ass't Aldermen.

JOSEPH F. ATWILL,
President of Board of Aldermen.

Approved December 5, 1853.

G. K. GARRISON,
Mayor.

[Copy of portion of Gardiner's map, annexed by stipulation to statement.]

In the Supreme Court

OF THE

UNITED STATES.

ADOLPH C. WEBER,

Plaintiff and Appellant.

vs.

THE HARBOR COMMISSIONERS
OF THE STATE OF CALIFORNIA,

Defendants and Respondents.

Brief and Argument of Respondents.

T. T. CRITTENDEN,
Solicitor for Respondents.

THOMAS P. RYAN,
Of Counsel.

In the Supreme Court

OF THE UNITED STATES.

ADOLPH C. WEBBER,
Appellant,
vs.
THE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA.

Supplemental Brief of JOHN F. SWIFT, *of Counsel for Appellees, setting forth statutes relied upon by Appellees.*

The Legislative acts referred to in former brief, are herein more fully set forth:

"An Act to provide for the disposition of certain property of the State of California." Passed March 26, 1851.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SEC. 1. All the lots of land situated within the following boundaries, according to the survey of the city of San Francisco, and the map or plat of the same now on record in the office of Recorder of the county of San

Francisco, are known and designated in this act, as the San Francisco Beach and Water Lots; that is to say, beginning at the point where the eastern line of Simmons street intersects the southern boundary line of the city; thence northerly on the eastern line of Simmons street, to the southern line of South street; thence easterly on the southern line of South street, to a point three hundred and seventy-five feet easterly from Simmons street; thence at right angles to South street, northerly to the eastern line of Hubbel street; thence easterly on the line of Hubbel street, two hundred and seventy-five feet; thence northerly at right angles to Hubbel street, to the southern side of Hooper street; thence easterly on the southern line of Hooper street, to the eastern line of Fifth street; thence northerly on the eastern line of Fifth street, to the southern line of Channel street; thence easterly on the southern line of Channel street, to the eastern line of Third street; thence northerly on the eastern line of Third street, to the southern line of Berry street; thence easterly on the southern line of Berry street, to the eastern line of Second street; thence northerly on the eastern line of Second street, to the southern line of King street; thence easterly on the southern line of King street three hundred and seventy-five feet; thence northerly at right angles to King street, to the southern line of Townsend street; thence easterly on the southern line of Townsend street, to the eastern line of First street; thence northerly on the eastern line of First street, to the southern line of Brannan street; thence easterly on the southern line of Brannan street, to the eastern line of Beal street; thence northerly on the eastern line of Beal street, to the southern line of Bryant street; thence easterly on the southern line of Bryant street, to the eastern line of Spear street; thence northerly on the eastern line of Spear street, to a point within one hundred and thirty-seven and one-half feet of the southern side of Harrison street; thence easterly at right angles to Harrison street, to the

eastern line of Stuart street; thence northerly on the eastern line of Stewart street, to the southern line of Folsom street; thence easterly on the southern line of Folsom street, to the eastern line of East street; thence northerly on the eastern line of East street, to its point of intersection with the northern side of Jackson street; thence northerly at right angles with the northern side of Jackson street, to the northern line of Pacific street; thence westerly along the northern side of Pacific street, to the eastern line of Davis street; thence northerly along the eastern line of Davis street, to the northern line of Vallejo street; thence westerly along the northern line of Vallejo street, to the eastern line of Front street; thence northerly on the eastern line of Front street, to the northern line of Greenwich street; thence easterly on the northern line of Greenwich street, to the eastern line of Battery street; thence northerly on the eastern side of Battery street, to the northern line of Lombard street; thence westerly on the northern line of Lombard street, to the eastern line of Sansom street; thence northerly on the eastern line of Sansom street, to the northern line of Chesnut street; thence westerly on the northern line of Chesnut street, to the eastern line of Montgomery street; thence northerly on the eastern line of Montgomery street, to the northern line of Francisco street; thence westerly on the northern line of Francisco street, to the eastern line of Kearny street; thence northerly on the eastern line of Kearny street, to the northern line of North Point street; thence westerly on the northern line of North Point street, to the east line of Dupont street; thence northerly on the eastern line of Dupont street, to the northern line of Beach street; thence westerly on the northern line of Beach street, to the eastern line of Powell street; thence northerly on the eastern line of Powell street, to the northern line of Jefferson street; thence westerly on the northern line of Jefferson street, to the western line of Larkin street; thence

following the line of ship's channel, to the western boundary line of said city; thence southerly along the western boundary line of said city, to the natural high water mark; thence along the line of the said high water mark, to its point of intersection with the southern boundary line of said city; thence easterly along the southern boundary line of said city, to its point of intersection with the eastern line of Simmons street, being the place of beginning.

SEC. 2. The use and occupation of all the lands described in the first section of this act is hereby granted to the city of San Francisco, for the term of ninety-nine years from the date of this act; except as hereinafter provided, all the lands mentioned in the first section of this act, which have been sold by authority of ayuntamiento, or town, or City Council; or by any Alcalde of the said town or city, at public auction, in accordance with the terms of the grant known as Kearny's grant to the city of San Francisco; or which have been sold or granted by any Alcalde of the said city of San Francisco, and confirmed by the ayuntamiento, or town, or City Council thereof, and also registered or recorded in some book of record now in the office, or custody, or control of the Recorder of the Court of San Francisco, on or before the third day of April, A. D. one thousand eight hundred and fifty, shall be, and the same are hereby, granted and confirmed to the purchaser or purchasers or grantees aforesaid, by the State relinquishing the use and occupation of the same and her interests therein to the said purchasers or grantees and each of them, their heirs and assigns, or any person or persons holding under them, for the term of ninety-nine years from and after the passage of this act: *Provided*, That the city of San Francisco shall pay into the State Treasury twenty-five per cent. of all moneys hereafter arising in any way from the sale or other disposition of the property described in the first section of this act; the

same to be paid within twenty days after its receipt by said city. The property known as the Government reservation is exempt from the operation of this act; except that any estate held by virtue of any lease or leases, executed or confirmed by any officer of the United States on behalf of the same, shall be and the same are hereby granted and confirmed to the lessees thereof, and the written instrument whereby such lease or leases was made shall in all actions brought by the lessees for the recovery of the lands so demised, be sufficient evidence of title and possession to enable the plaintiff to recover.

SEC. 3. That the original deed, or other written or printed instruments of conveyance, by which any of the lands mentioned in the first section of this act were conveyed or granted, by such Common Council, Ayuntamiento or Alcalde; and in case of its loss, or not being within the control of the party, then a record copy thereof, or a record copy of the material portion thereof, properly authenticated, may be read in evidence in any court of justice in this State, upon the trial of any cause in which the contents of the same may be important to be proved, and shall be *prima facie* evidence of title and possession, to enable the plaintiff to recover possession of the land so granted.

SEC. 4. That the boundary line described in section first, of this act, shall be and remain a permanent water front of said city; the authorities of which shall keep clear and free from all obstructions whatsoever the space beyond said line, to the distance of five hundred yards therefrom.

SEC. 5. The city of San Francisco shall, within thirty days after the passage of this act, deposit in the office of the Secretary of State of California, and in the office of the Surveyor General of this State, and in the

office of the Surveyor of the City of San Francisco, a correct map of said boundary line mentioned in section one, of this act, distinctly and properly delineated by a red line; said maps shall be duly certified to by the Mayor and Surveyor of said city, and under the official seal of said city.

SEC. 6. Nothing in this act shall be construed as a surrender by the State of its right to regulate the construction of wharves or other improvements, so that they shall not interfere with the shipping and commercial interests of the bay and harbor of San Francisco.

Stat. of Cal. 1851, p. 307.

"An Act in relation to the City of San Francisco."
Passed May 1, 1851.

The people in the State of California, represented in Senate and Assembly, do enact as follows:

SEC. 1. The city of San Francisco is hereby authorized and empowered to construct wharves at the end of all the streets, commencing with the bay of San Francisco, the wharves to be made by the extension of said streets into the bay, in their present direction, not exceeding two hundred yards beyond the present outside line of the beach and water lots, and the city is authorized to prescribe the rates of wharfage that shall be collected on said wharves, when constructed. The space between said wharves, when they are extended, which is situated outside of the outer line of beach and water lot property, as defined by the Legislature shall remain free from obstructions, and be used as public slips for the accommodation and benefit of the general commerce of the city and State.

SEC. 2. The right of the State to the Beach and Water Lot property in the City of San Francisco is hereby relinquished to said city: *Provided, always*, that the relin-

quishment to the city is made upon the express conditions that said city shall confirm the titles to all lots which have been granted by any justice of the peace; which lots are situated on that part of the Kearny grant which is within the following boundaries, to wit: bounded on the north by Vallejo street, on the south by Harrison street, on the east by the easterly boundary of said beach and water lots as defined by the Legislature, and on the westerly side by Front and Freemont streets; said grants shall be, and the same are hereby confirmed and made evidence of title in all Courts of this State, and holders under them shall have possession of said property so granted: *Provided, always*, that this act shall not be construed as confirming grants to the property known as the Public Slip, bounded by Davis, Clay, and Sacramento streets, nor to any property the title or lease to which has been confirmed to individuals by any former act of this Legislature; and said grant must have been recorded in the Recorder's office prior to the first day of February, one thousand eight hundred and fifty-one.

Stat. of Cal. 1851 p. 311.

"An act to provide for the sale of the interest of the State of California in the property within the water-line front of the city of San Francisco, as defined in and by the act entitled, 'An act to provide for the disposition of certain property of the State of California.' Passed March 26, 1851."

SEC. 5. The said commissioners, after their appointment and confirmation, shall as speedily as possible, and they are hereby empowered to enter upon and take possession of all the property and interests of property, of whatever description, of the State of California, within the line fixed by an act entitled, "An Act to provide for the disposition of certain property of the State of California," passed March twenty-sixth, one thousand eight hundred and fifty-one, and defining the present

water front of the city of San Francisco, and to dispose of the same, in the manner and for the purposes in this act provided; and they are hereby authorized in and by the name of the people of the State of California, to bring and maintain all suits and proceedings at law in any Court of this State or of the United States, and to do any other act, or exercise any other power necessary to carry out the provisions of this act.

SEC. 7. The commissioners shall first ascertain the extent, nature, and character of all the property and interests of property of the State of California, situated within the line in section five of this act referred to; and as soon as possible thereafter, they shall proceed to sell, at public auction, in the city of San Francisco, all the right, title, and interest of the State of California, of, in, and to, all the said property or interests of property. Such sale shall be made by lots, as the same are now laid out on the official map of said city, and where none such are so laid out, then in such lots as may be laid out by the board in conformity with the said official map. But no open slip authorized by law to be kept open as a slip shall be sold, but the same shall remain open, for the purpose of commerce, until otherwise ordered by law. The terms of such sale shall be as follows: Cash, or the civil bonds of the State of California, or the civil warrants of the Comptroller of State on the Treasury. Ten per cent. to be paid on the day of sale, twenty-five per cent. in ten days thereafter, and the remaining sixty-five per cent. in three months; in default whereof, the property shall be re-sold at the expense and on the account of the purchaser. The acts of the sale at the purchaser's expense. At least thirty days' notice of all sales shall be given in three daily newspapers in the city of San Francisco, of which the newspaper known as the "Times and Transcript" shall be one; in the newspaper known as the "Democratic State Journal," in the city of Sacramento, and in the newspaper

known as the "San Joaquin Republican," in the city of Stockton. Such notices shall specify the property to be sold by its numbers and locality as to streets, on the city map, and by such other description as shall be sufficient to fully inform purchasers, and also the time, place, and conditions of sale. In closing each bid the auctioneer shall allow a sufficient time to give notice, after having declared the same, and then if an advance of twenty-five dollars or more shall be bid, the bidding shall be renewed until finally closed. The compensation of the auctioneer shall not exceed one-half of one per cent. on the gross sales, to be paid by the purchaser; *Provided*, That nothing in this act contained shall affect any lands legally appropriated for the use of wharves in the said city, prior to the passage of this act, where the contracts under which said wharves were built have been heretofore ratified or confirmed by a statute of the State. *And provided, also*, That nothing in this act contained shall authorize or empower the Commissioners, or any officer under this act, to take charge of or sell any property legally sold by the authorities of the city of San Francisco, under, or confirmed or granted by the provisions of the act entitled, "An Act to provide for the disposition of certain property of the State of California," passed March twenty-sixth, one thousand eight hundred and fifty-one, excepting it be the remaining interest of the State in said property, after the expiration of the estate or term granted or mentioned in said last-mentioned act, and excepting also it be the property known as the Government Reserves, which remaining interest and reserves may be sold, and are not intended to be exempted from sale by this proviso.

Cal. Stat. of 1853. p. 219.

"An act to provide for the improvement and protection of the wharves, docks, and water front, in the city and county of San Francisco." Approved April 24, 1863.

The sections relied upon by appellees and to which the attention of the Court is called, are as follows:

SEC. 2. As soon as all three of the Commissioners created by this act shall have received their commissions, they shall take possession of, and hold all that portion of the Bay of San Francisco lying along the water front of said city and county of San Francisco, and adjacent thereto, to the distance of six hundred feet into the waters of said bay, from the line of the water front, as defined by an act of the Legislature, approved March twenty-sixth, one thousand eight hundred and fifty-one, together with all the improvements, rights, privileges, franchises, easements, and appurtenances connected therewith; or in anywise appertaining thereto, excepting such portions of said water front as may be held by parties under valid leases; and the Commissioners shall also take possession and have control of any and all such portions of said water front, with the improvements, rights, privileges, franchises, easements, and appurtenances, as are held under valid leases, as soon as said leases shall respectively expire and become void. The Commissioners shall, as soon as may be after entering upon their duties under this act, investigate and ascertain by what authority any portion of said water front is possessed and held by persons or parties adversely to the possession of the State through such Commissioners, and shall publish the result of their investigations in one of the newspapers printed and having the largest circulation in said city and county of San Francisco; and if any person or company in the possession of any portion of said water front, holding the same adversely to the State, shall, when required by the Commissioners to make known to them the authority by

virtue of which such person or company claims to hold such possessions, refuse or neglect to make the same known, the Commissioners shall institute such legal proceedings as may be necessary to discover the nature of such authority, and the costs of such proceedings shall be paid and recovered from the person or company in such adverse possession and so refusing. The said Commissioners are hereby authorized and empowered to institute actions at law or in equity for the possession of any wharf or wharves, or other rights, privileges, franchises, &c., named in this section, or for the recovery of the tolls, dockage, rents, and wharfage thereof; also, for the removal of obstructions, and abatement of any and all nuisances on the water front mentioned in this act, and to prosecute the same to final judgment.

SEC. 3. The Commissioners shall have and hold possession and control of the said water front, with the improvements, rights, privileges, franchises, easements, and appurtenances connected therewith, or in anywise appertaining thereto, for the following purposes and uses:

First. To keep in good repair all the sea-walls, embankments, wharves, piers, landings, and thoroughfares, for the accommodation and benefit of commerce.

Second. To dredge such number of the docks as the commerce of the harbor may require, to a depth that will admit of the easy ingress and egress of the vessels which load and unload at said wharves and piers.

Third. To construct such new wharves, piers, landings, and thoroughfares, at the foot of the streets, as the wants of commerce may require.

Fourth. To construct all works necessary for the protection of wharves, piers, docks, landings, and thoroughfares, and for the safety and convenience of shipping.

Fifth. To provide for the construction, out of the surplus funds growing out of the revenues arising from

said wharves, such sea-wall or other structure along the water front of said City and County of San Francisco, as shall, upon accurate surveys made for that purpose, be found to be necessary for the protection of the harbor and water front of said city and county. The said structure or sea-wall shall be commenced at some point between Harrison street and Vallejo street, upon said water front, and shall be completed between said streets before any work upon said structure or sea-wall is done north of Vallejo street or south of Harrison street.

Sixth. To collect such rents, tolls, wharfage, craneage, and dockage, as may, from time to time, be fixed under the authority of this act, and to disburse and dispose of the revenues arising therefrom as in this act provided.

SEC. 10. Every wharf and pier hereafter constructed shall commence at the foot of some street, as laid down on the official map of City and County of San Francisco, and shall extend into the bay in a direct line with such street. No wharf or pier hereafter constructed shall ever be extended into the bay more than six hundred feet beyond the water front of said City and County of San Francisco, as established by an act of the legislature, appproved March twenty-sixth, one thousand eight hundred and fifty-one. All of the spaces bounded by the said water front and a line parallel thereto, and six hundred feet therefrom, in said bay, and lines running from the termination of the lines of said streets, and in a straight course with said lines to the line in the bay six hundred feet from said water front, shall be used solely and exclusively for docks, quays, landing places, and thoroughfares forever; and said spaces are hereby dedicated to the aforesaid uses forever.

SEC. 20. No person or company shall, after the Commissioners elected under this act shall have been commissioned as herein provided, collect any tolls, wharfage, and dockage, upon any portion of the water front of

the City and County of San Francisco, nor shall any person or persons land or ship any goods, wares, or merchandise, or other thing, upon or from any portion of the said water front of said City and County of San Francisco, unless authorized so to do by the said Commissioners, excepting such persons or companies as may hold possession of some portion of the property described in this act by valid leases. Any person violating or offending against the prohibition in this section contained shall be deemed guilty of a misdemeanor, and upon conviction thereof in any Court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the County jail of the City and County of San Francisco, not exceeding six months, or by both such fine and imprisonment.

Cal. Stat. of 1863, p. 406.

This brief is believed to be in compliance with the suggestion of the Court made at the hearing of the cause.

JOHN F. SWIFT,
Of Counsel for Appellees.